

REQUEST FOR QUALIFICATIONS
FOR
ARCHITECTURAL AND ENGINEERING
TECHNICAL ASSISTANCE
FOR
NEW AND EXISTING FACILITIES



RFQ #400-03-401

www.energy.ca.gov/contracts

State of California
California Energy Commission

October 2003

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REQUEST FOR QUALIFICATIONS

Section 1 - Introduction

Background Summary

For many years, the California Energy Commission has successfully implemented energy efficiency programs, providing engineering and architectural services to the following participants:

- Public or non-profit schools, colleges, and universities
- City or county governments
- Public or non-profit hospitals
- Special districts
- Public or non-profit care institutions, e.g., long term care institution, rehabilitation institution, institution for the provision of public health services, a residential child care facility

These programs have provided technical support and funding to retrofit heating, ventilating, air conditioning, lighting equipment, controls, and motors within existing buildings. The programs also provided new construction design support as well as services to help public agency personnel evaluate proposals from Energy Services Companies.

What is the Purpose of this RFQ?

This Request for Qualifications (RFQ) is to solicit and select, a single consulting Prime Contractor that will head a team of engineers and architects under Subcontracts, to assist and support the Energy Commission. The team must include architects and engineers with expertise in new construction and in modernizing, renovating and retrofitting existing buildings.

The Commission will accept bids from a Prime Contractor representing a team of companies. A single company, and not a group of representatives from different companies, must bid as the Prime Contractor. The Prime Contractor will be responsible for all contract administrative duties, and may also participate in technical work assigned. The team must include a minimum of three architectural and engineering companies. The intent is to have the ability to access either architectural or engineering services from at least three separate firms. The architects must have expertise in new public building construction projects including schools, small and large institutional facilities, such as jails and city, county and state office and administrative buildings. The engineers must have experience in performing energy analysis, energy audits, feasibility studies of energy projects, and renewable energy generation projects.

The Prime Contractor will provide administrative support by directing subcontractors in all contract provisions. The team will support new construction through the review of new facility designs and computer simulations, recommending cost-effective alternatives to increase energy efficiency, reduce energy cost, and/or use a renewable resource. The team will support modernization, deferred maintenance, and retrofit projects by conducting facility energy audits and preparing technical reports and performance specifications.

Section I - Introduction

How is this RFQ Organized?

This Request for Qualifications is organized into the following sections:

- Section I - provides a summary and administrative overview of the RFQ Requirements.
- Section II - provides administrative detail including legal requirements of the RFQ.
- Section III - explains in detail the format, documents and technical expertise needed to submit a successful Statement of Qualifications (SOQ).
- Section IV - explains the work to be accomplished.
- Section V - hypothetical questions for the bidder's response.
- Section VI - explains the evaluation process.

How Much Funding is Available?

Fiscal Year	Funding Source	Amount
2003/04	PVEA-LJEA (Petroleum Violation Escrow Account - Local Jurisdiction Energy Assistance)	\$ 122,000
2003/04	SCSA (State and Consumer Services Agency)	\$ 220,000
2003/04	ECAA* (Energy Conservation Assistance Account)	\$ 500,000
2004/05	PVEA-LJEA	\$ 142,000
2004/05	ECAA*	\$ 1,100,000
2003-2005	Reimbursable funds**	\$ 156,000
	TOTAL	\$ 2,240,000

* Approximate

** Estimated amount depends on the amount of cost sharing from the participants identified under "Background Summary."

How Do I Respond To This RFQ?

Responses to this solicitation will be in the form of a SOQ according to the format described in Section III. The SOQ shall document the Bidder's qualifications to perform the tasks described in the Scope of Work found in Section IV.

Is Work Guaranteed?

No. The Commission does not guarantee any minimum amount of work under this RFQ. The selected Prime Contractor team will be assigned work via specific work authorizations. Work assignments will be assigned based on the Prime Contractor's relative expertise or project workload. The Commission makes no guarantee that any or all of the funds will be assigned in any given year or that any or all of the selected Prime Contractor or any team member will be assigned work.

Section I - Introduction

Whom Do I Contact?

This RFQ is available through the Commission's Web Site at <http://www.energy.ca.gov/contracts/index.html>. Questions or clarifications about this RFQ should be directed to:

PEG A. PIGEON, Contract Officer
California Energy Commission
1516 Ninth Street, MS-18
Sacramento, CA 95814
Telephone: (916) 654-7093 FAX: (916) 654-4423

Verbal Communication

Any verbal communication with a Commission employee concerning this RFQ is not binding on the State and shall in no way alter a specification, term, or condition of the RFQ. Therefore, all communication should be directed to the Commission's Contract Officer assigned to the RFQ.

What Are The Key Activities and Dates?

Key activities and times for this RFQ are presented below:

ACTIVITY	ACTION DATE
RFQ Release	October 7, 2003
Deadline for Written Questions	October 21, 2003
Pre-bid Conference (Sacramento)	October 21, 2003
Distribute Questions/Answers and Addenda (if any) to RFQ	November 4, 2003
Deadline to Submit SOQ	November 19, 2003
Oral Interviews	December 9, 2003
Notice of Selection	December 16, 2003
Negotiations	December 18-31, 2003
Notice of Award	January 6, 2004
Commission Business Meeting	February 4, 2004
Contract Start Date	February 18, 2004
Contract End Date	February 18, 2007

Section I - Introduction

How Can I Obtain Further Information?

One Pre-Bid Conference will be held to answer questions. Please call (916) 654-4392 to confirm date, time, and location, or refer to the Commission's Web Site at www.energy.ca.gov/contracts. Prospective Bidders are encouraged to attend the meeting to be held on:

October 21, 2003, 10:00 a.m. to 12:00 Noon
California Energy Commission, Commission Hearing Room B
1516 Ninth Street, Sacramento, CA 95814

At the option of the Commission, questions posed during the Pre-Bid Conference may be answered either orally or in writing.

What Are My Responsibilities For Submitting A Statement of Qualifications?

Bidders must take the responsibility to:

- Carefully read this entire RFQ.
- Ask the appropriate questions in a timely manner.
- Submit all required responses in a complete manner by the required date and time.
- Make sure that all procedures and requirements of the RFQ are followed and appropriately addressed.
- Carefully reread the entire RFQ before submitting an SOQ.

What Reference Documents Should I Review?

Bidders responding to this RFQ may want to familiarize themselves with the following documents:

- Feasibility Study Guidelines *Guide to Preparing Feasibility Studies for Energy Efficiency Projects*, publication number P400-96-003, developed by the Energy Commission
- Copies of past energy audit technical reports prepared by Energy Commission consultants
- Collaborative for High Performance Schools (CHPS) Best Practices Manuals Volumes I and II.

All above reference documents are on display and available for review in the Energy Commission's Library (Monday–Thursday from 9:00 a.m. to 12 p.m. and 1:00 to 4:00 p.m. and Friday, 9:00 a.m. to 12:00 p.m.) located at:

California Energy Commission
1516 Ninth Street, MS-10
Sacramento, CA 95814
(916) 654-4292

Section I - Introduction

Copies of all above reference publications may also be obtained from:

**California Energy Commission
Contracts Office
1516 Ninth Street, MS-18
Sacramento, CA 95814
(916) 654-4392**

Section II - Administrative Information

About This Section

This section provides Bidders details in submitting a successful Statement of Qualifications (SOQ), including definitions of important terms, sources of information, submitting the SOQ, confidential information, grounds for rejecting an SOQ, and other administrative details.

What Is An RFQ?

The competitive method used for this procurement of services is a Request for Qualifications (RFQ). An SOQ submitted in response will be scored and ranked based on the criteria in Section VI. Every SOQ must establish in writing the Bidder's ability to perform the RFQ's tasks stated in Section IV. The Commission will conduct mandatory interviews and select the best qualified Bidder. The Commission will negotiate a contract with the selected Bidder for compensation which the Commission determines to be fair and reasonable.

Commission Issued RFQ

The California Energy Commission has issued this RFQ on behalf of the State of California. The Commission is the sole point of contact for this RFQ. The Contact Person for questions is:

PEG A. PIGEON, Contract Officer

Telephone: (916) 654-7093

FAX: (916) 654-4423

E-Mail: ppigeon@energy.state.ca.us

How Are Key Words Defined?

Important definitions for this RFQ are presented below.

WORD/TERM	DEFINITIONS
Bidder	Respondent to this RFQ
Commission	California Energy Commission
Contract	The agreement signed by all parties and approved by Department of General Services. A contract is defined in the Public Contracts Code as an agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract awarded for or on behalf of the State of California.
Contract Budget	The proposed Commission-reimbursable expenditures for that portion of the project covered by the contract period.
Contract Term	The time duration of the contract between the Commission and the Prime Contractor. All Commission reimbursed activities must occur during the contract term.

Section II – Administrative Information

DGS	Department of General Services
Prime Contractor	Bidder who enters into a contract with the Commission.
RFQ	Request for Qualifications – this entire document.
SOQ	Statement of Qualifications. Formal written response to the Request for Qualifications.
Subcontractor	Company that contracts with the Bidder submitting an SOQ to provide primary or support tasks.

When Is The Deadline For Questions about the RFQ?

Potential Bidders may ask questions about the requirements of this RFQ. Bidders must prepare their questions in writing and send, FAX, or e-mail them to the Contact Person. Questions will be answered in writing and distributed to recipients of the RFQ. **The deadline for written questions is October 21, 2003.**

When Is The Deadline For Submitting SOQs?

All copies of your SOQ must be delivered to the Commission Contract Office by **November 19, 2003.**

NOTE: The Commission will not accept late SOQs (delivered after 5:00 P.M.). There are no exceptions.

How Do I Deliver My SOQ?

A Bidder may deliver an SOQ by:

- U.S. Mail,
- in person, or
- messenger service.

All SOQs must be **delivered** to the Commission's Contract Office by **5:00 P.M. on November 19, 2003.** If a Bidder chooses either of the last two methods, delivery of all copies prior to 5:00 P.M. on November 19, 2003, must be made during normal business hours of 8:00 A.M.- 5:00 P.M., Monday through Friday. E-mail and facsimile (FAX) transmissions **WILL NOT** be accepted in whole or in part under any circumstances.

Where Do I Deliver My SOQ?

California Energy Commission
Contracts Office, MS-18
1516 Ninth Street
Sacramento, CA 95814

Section II – Administrative Information

How Many Copies Do I Submit?

Each Bidder must mail or deliver an original SOQ and seven (7) copies. The Bidder must submit the original and copies in a sealed envelope labeled “Statement of Qualifications for Architectural and Engineering Technical Assistance for New and Existing Facilities, RFQ # 400-03-401”.

Are There Important Administrative Details I should Know?

Americans with Disabilities Act

The successful Bidder, by signing the final contract, certifies compliance with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Bidder's Admonishment

This RFQ contains the instructions governing the requirements for a firm quotation to be submitted by interested Bidders, the format in which the Statement of Qualifications information is to be submitted, the material to be included, the requirements which must be met to be eligible for consideration, and Bidder responsibilities.

Bidder's Cost

The Bidder is responsible for the cost of developing an SOQ and this cost cannot be charged to the State.

Confidential Information

No confidential information is allowed to be submitted in your SOQ. Any SOQ that contains confidential information will be rejected.

Disabled Veteran Enterprises

This contract is subject to a participation goal of three percent (3%) certified California Disabled Veteran Business Enterprises as set forth in Public Contract Code Sections 10115, et seq. See Attachments 2.1 - 2.4.

Drug-Free Workplace

The successful Bidder, by signing the final contract, certifies compliance with California Government Code Section 8350 et seq., which relates to providing a drug-free workplace.

Nondiscrimination Certification

Nondiscrimination Certification – Any bid, proposal, or offer for a contract which is submitted by a Prime Contractor who has been decertified from contracting with the State by the Department of Fair Employment and Housing (DFEH), shall be deemed to be nonresponsive. Refer to the California Notice Register for a list of decertified contractors. (Published by the Office of Administrative Law and available through the Office of State Printing).

Recycle Paper and Products

The successful Bidder shall certify in writing the minimum, if not exact, percentage of recycled content of paper used in the performance of the contract, regardless of whether the product meets the required recycled product percentage defined in Public Contract Code sections 12161 and 12200. The successful Bidder may certify that the product contains zero recycled content. (PCC § 10308.5).

Section II – Administrative Information

Small Business Preference

No Small Business Preference is given in the RFQ selection process.

Special Terms and Conditions

Because this contract has several funding sources, there are three sets of *Terms and Conditions* associated with this contract (see Attachments 5A, 5B, and 5C). Each set of *Terms and Conditions* applies to a specific funding source. The Contract will include all three sets of *Terms and Conditions*. The Contract will be written on a work authorization basis as described in Section IV, Scope of Work. Each work authorization will specify the applicable funding source(s) and will include a copy of the specific *Terms and Conditions* that apply to that particular work authorization.

Refer to Attachments 5A, 5B, and 5C for the specific *Terms and Conditions* which are designated as follows:

- Attachment 5A:** Standard Agreement with General Terms and Conditions for ECAA funded work
- Attachment 5B:** Standard Agreement with Federal Funding Language and General Terms and Conditions for PVEA-LJEA funded work
- Attachment 5C:** Standard Agreement with State and Consumer Services Agency Required Terms and Conditions for SCSA funded work

Statement of Compliance

All employers who are or wish to become, contractors with the State must develop and implement a nondiscrimination program as defined in Title 2, CCR Section 8104; unless specifically exempted pursuant to Title 2, CCR Section 8115, which includes contracts under \$5,000 and contracts with licensed rehabilitation workshops. See Government Code Section 12900 et seq, and Title 2, CCR Section 8103.

Can The Commission Cancel This RFQ?

Yes, if it is in the State's best interests, the Commission reserves the right to do any of the following:

- Cancel this RFQ,
- Amend this RFQ as needed, or
- Reject any or all SOQs received in response to this RFQ

Can The Commission Amend This RFQ?

If the RFQ must be amended, the Commission will mail a formal written addendum to all parties who requested the RFQ and also post it on the Commission's Web Site:

www.energy.ca.gov/contracts and Department of General Services' Web Site:
www.dgs.ca.gov/cscr.

What If I Decide to Modify Or Withdraw My SOQ?

Withdrawal/Modification

A Bidder may, by letter to the Contact Person, withdraw or modify a submitted proposal before 5:00 P.M. on November 19, 2003. SOQs cannot be changed after that date and time.

Section II – Administrative Information

Immaterial Defect

The Commission may waive any immaterial defect or deviation contained in a Bidder's proposal. The Commission's waiver shall in no way modify the proposal or excuse the successful Bidder from full compliance.

What Information Is Required for Subcontractors?

The Bidder must identify subcontractor(s) in the SOQ. The Bidder must provide a summary of each subcontractor's qualifications, experience and duties that would be performed under the Scope of Work found in Section IV.

If new subcontractors are hired or added after the contract is signed, the Prime Contractor shall submit proposed subcontractor contracts to the Commission for review and approval. At the same time, the Prime Contractor shall provide the Commission with updated Disabled Veteran Owned Business Enterprise forms. The Prime Contractor is responsible for the quality of all subcontractor work, and the Commission will assign all work to the Prime Contractor.

On What Grounds Would My SOQ Be Rejected?

An SOQ shall be rejected if:

- It is received after the exact time and date set for receipt of SOQs.
- It is considered nonresponsive to the California Disabled Veteran Business Enterprise participation requirements.
- It is lacking a properly executed Certification Clause(s), Attachment 3.
- It contains false or intentionally misleading statements or references which do not support an attribute or condition contended by the Bidder.
- If the SOQ is intended to erroneously and fallaciously mislead the State in its evaluation of the SOQ and the attribute, condition, or capability is a requirement of this RFQ.
- There is a conflict of interest as contained in Public Contract Code Sections 10410, 10411, or any other conflict of interest law or eligibility conflict interest rules in this RFQ.
- It contains confidential information.
- It is not prepared in the mandatory format described.
- It is unsigned.
- It does not literally comply or contains caveats that conflict with the RFQ and the variation or deviation is not material, or it is otherwise nonresponsive.

An SOQ may be rejected if:

- It is not prepared in the mandatory format described.
- It is unsigned
- It does not literally comply or contains caveats that conflict with the RFQ and the variation or deviation is not material, or it is otherwise nonresponsive.

Section II – Administrative Information

Are There Important Selection Process Steps?

Interviews

Interviews will be conducted during the Evaluation Process for this RFQ. Bidders should anticipate travel to the Energy Commission Headquarters. Interview dates are tentatively set for December 9, 2003.

Notice of Selection

Subsequent to the SOQ evaluations, on December 16, 2003, after 12:00 noon, a "Notice of Selection" will be mailed to all bidders. It will also be posted in the Commission's Contracts Office and posted on the Commission's web site.

Negotiations

Pursuant to Title 20, CCR, Section 2565 and Public Contract Code (PCC) 6106, within 14 days after posting the Notice of Selection, the Commission will begin negotiations with the top three ranked Bidders for an acceptable fee (hourly rates). The top ranked Bidder will be required to submit a list of rates after written notification of selection. If negotiations with the top ranked Bidder fails, the Commission will enter into negotiations with the next highest Bidder, and so on. If negotiations with the top three ranked Bidders fail, negotiation will be entered into with the next three highest ranked Bidders, and so on.

How Do I Know If I've Been Awarded A Contract?

Notice of Award

On January 6, 2004, a "Notice of Award" will be mailed to the successful Bidder. It will also be posted in the Commission's Contracts Office and posted on the Commission's web site.

What Happens To My Documents?

On the submission date, all SOQs and related material submitted in response to this RFQ become the property of the State. After the Notice of Proposed Award is posted, all SOQs and related materials become public records. In addition, all evaluation and scoring sheets become public records after the Notice of Proposed Award is posted.

What Are The Contract Requirements?

Term of the Contract

The contract will be effective up to three years beginning from the commencement of the contract term.

RFQ in Final Contract

The content of this RFQ will be incorporated by reference into the final contract.

Contract Cancellation

The Commission reserves the right to terminate any contract awarded through this RFQ by providing a 30-day notice to the successful Bidder.

Contract Amendment

The contract executed as a result of this RFQ will be able to be awarded by mutual consent of the State and Prime Contractor. The contract may require amendment as a result of project review, changes and additions, changes in project scope, or availability of funding.

Section II – Administrative Information

No Contract Until Signed & Approved

No agreement between the Commission and the successful Bidder is in effect until the contract, signed by the Prime Contractor, has been approved at a Commission Business Meeting and, if over \$75,000, approved by the Department of General Services, Legal Services.

Audit

The Bureau of State Audits may audit a contract awarded under this RFQ for a period of three years after the final payment or termination of the contract.

Errors

If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFQ, the Bidder shall immediately notify the Commission of such error in writing and request modification or clarification of the document. Clarifications will be given by written notice of all parties who have obtained an RFQ, without divulging the source of the request for clarification. The Commission shall not be responsible for failure to correct errors.

Section III - Statement of Qualifications Format and Required Documents

About This Section

This section provides Bidders with information about how to prepare a Statement of Qualifications (SOQ) in response to this RFQ. Bidders must follow all SOQ format instructions, answer all questions, and supply all requested data.

The Commission may reject any SOQ that fails to comply with the items presented in this section.

Pricing/Rates Information

Do not submit any price quotes or bids in your SOQ, since this will be negotiated with the top rated Bidder.

Bidder's Responsibility

It is the Bidder's responsibility to review Grounds for Rejection, Section II.

What Is The Required Format?

The following topics constitute the **mandatory order of presentation for an SOQ**. Provide one original and seven (7) copies. Two-sided copying is preferred:

VOLUME 1, Administrative Response

1. Cover Letter
2. Table of Contents
3. Required Documents and Statements
 - Contractor Status Form - Attachment 1
 - Completed Disabled Veteran Business Enterprise Forms - Attachment 2.1-2.4
 - Signed Certification Clauses - Attachment 3
 - Target Area Contract Preference Act (TACPA) Request (if applicable) - Attachment 6
 - Local Agency Military Base Recovery Area (LAMBRA) Preference Request (if applicable) - Attachment 7
 - Enterprise Zone Act (EZA) Preference Request - Attachment 8

VOLUME 2, Technical Response

1. Qualifications Summary
2. Approach to Tasks in Scope of Work - Attachment 5
3. Prime Contractor Qualifications
4. Project Team Organization Structure
5. Project Team Relevant Experience and Qualifications
6. Customer References - Attachment 4
7. Examples of Prior Work
8. Response to Questions in Hypothetical Illustrations, Section V.

Section III – SOQ Format and Required Documents

VOLUME 1, ADMINISTRATIVE RESPONSE FORMAT

Cover Letter

Each Bidder shall submit a cover letter on company letterhead that includes:

1. A reference to: "REQUEST FOR QUALIFICATIONS, No. 400-03-401".
2. Summary of the Bidder's ability to perform the services described in the Scope of Work.
3. Statement that the Bidder is willing to perform those services and enter into a contract with the State.

The cover letter must be signed by a person having the authority to commit the Bidder to contract.

Table of Contents

Each SOQ must include a Table of Contents, organized in the order cited above and with corresponding page numbers.

Required Documents and Statements

Every Bidder must complete and include the following forms with their SOQ:

1. Contractor Status Form, Attachment 1
2. Disabled Veteran Business Enterprise (DVBE) forms in Attachment 2.1-2.4 (Bidders who qualify as government entities are exempt from this requirement).

A Short Explanation of the DVBE Process – If you are a non-governmental entity, you must have either three percent DBVE participation **or** you must demonstrate a good faith effort to obtain DVBE participation. It is important that you thoroughly read the instructions provided with each DVBE form. The DVBE compliance process is as follows:

- ? *If you are proposing to meet the three percent participation goals, complete and submit Attachment 2.2, Attachment 2.3, and a copy(ies) of the DVBE certification letter(s) from the Office of Small Business/DVBE Certification (OSDC).*
- ? *If you are proposing to partially meet the participation goals, complete and submit Attachment 2.2, Attachment 2.3, and attach a copy(ies) of the DVBE certification letter(s) from OSD, as well as Attachment 2.4 to demonstrate the good faith effort you performed to meet full participation. Your good faith effort must include advertising, which is explained on the reverse of Attachment 2.4.*
- ? *If you have no DVBE participation in your proposal, you must complete and submit Attachment 2.4 to demonstrate the good faith effort you performed in your attempt to meet participation. Your good faith effort must include advertising, which is explained on the reverse of Attachment 2.4.*
- ? *If you or a subcontractor has applied for DVBE certification, complete the appropriate Attachments as explained above, and include a copy of the application.*

3. Certification Clauses, Attachment 3.

Section III – SOQ Format and Required Documents

VOLUME 2, TECHNICAL RESPONSE FORMAT

Qualifications Summary

Summarize the Prime Contractor's overall approach in completing the tasks outlined in the Scope of Work in Section IV, highlighting any outstanding features and qualifications.

Approach To Tasks In Scope of Work

Describe the Prime Contractor's and team members' approach to providing services listed in the Scope of Work in Section IV, highlighting outstanding features, qualifications, and experience, including project management.

Prime Contractor's Qualifications

Contract Management and Administrative Qualifications

Describe the Bidder's approach to contract management and administration of this contract. Identify the Contract Management team members. Describe where Prime Contractor's office(s) are located and proposed methods of minimizing costs to the State. Describe where subcontractors are located and proposed methods of minimizing costs to the State.

Team Members and Relationship

Provide a short description of each firm and key members on the team. Describe the relationship between the Prime Contractor and subcontractors on your team. Indicate any history of a working relationship between the team members noting any significant success stories.

Analytical Tools

Describe what type of computers and/or analytical tools will be used to accomplish the tasks listed in the Scope of Work. Describe what data collection and monitoring equipment (i.e. flue gas analyzer, amp/watt meter, light meter, anemometer, data loggers, etc.) you and your subcontractors own. Discuss the availability of this equipment for use by Prime Contractor and subcontractors on the team.

Bidders must list all currently owned/licensed computer software programs by name and edition that may be used to accomplish the tasks listed in the Scope of Work. Bidders must use software compatible with Microsoft Office 2000, which is used at the Energy Commission. List the building simulation programs that you currently own that may be used to accomplish the tasks listed in the Scope of Work. Describe your company's experience with these simulation programs.

Project Team Organization Structure

1. Describe the organizational structure of the Prime Contractor, including providing an organizational chart of the entire contract team.
2. Describe professional awards, headquarters of the Prime Contractor and subcontractors, if any. Include type of organization, composition, and functions to be performed by staff members of the Prime Contractor and of the subcontractors and how the staff pertains to this contract.
3. Identify a primary contact person. This person should attend the oral interview session. At least one person from each technical area must also attend the interview.

Section III – SOQ Format and Required Documents

4. Describe any technical capabilities that would facilitate communicating with the Commission (e.g., internet capability and electronic reports).

Project Team Relevant Experience and Qualifications

1. Document the project team's qualifications as they apply to performing the tasks described in the Scope of Work. Describe the nature and scope of recently completed work, such as energy analysis, energy auditing, architectural and engineering design, project and construction management, building/system commissioning, renewable energy project feasibility studies, and project cost estimating.
2. Describe the project team's experience in with local government facilities, k-12 school/college facilities, state buildings, and other public facilities. Describe experience in reviewing new public facility designs, conducting facility energy audits, and reviewing and analyzing energy project proposals made by others.
3. Identify and list all Prime Contractor staff and subcontractors (all team members) who will be committed to the tasks and describe their roles.
4. Describe job classification, relevant experience, education, academic degrees and professional licenses of these technical staff team members.
5. Provide a current resume for all team members listed and identify the percentage of time each team member will be available throughout the contract.
6. Describe their familiarity with the administration, management, and technical expertise in performing pertinent tasks identified in the Scope of Work.

Customer References

Each Bidder shall complete a Customer Reference Form, Attachment 4. Three customer references are required for the Prime Contractor and three customer references are required for each subcontractor.

Examples of Prior Work

Each Bidder shall provide a minimum of one example of a work product for each of the following tasks (it is not necessary to provide seven copies of each work product, only one copy of each example is required):

- ? Task 1: Energy Efficiency Opportunities in Existing Buildings
- ? Task 2: Support for New Construction Projects
- ? Task 3: Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage,
- ? Task 5: Evaluate Energy Efficiency Opportunities in Water and Wastewater Treatment Facilities,
- ? Task 6: Engineering Support
- ? Task 7: Energy Efficiency Marketing.

If more than one company will be providing technical support in a task area, each firm shall submit one example product for the task. Companies should provide work examples that demonstrate experience in public sector projects related to potential work assignments described in this RFQ.

Section III – SOQ Format and Required Documents

Response To Questions In Hypothetical Illustrations

Each Bidder shall provide a full response to each Hypothetical Question in Section V, based on the scenario proposed in the Hypothetical Instructions.

Section IV. - Scope of Work

About This Section

In this section, the Commission describes the tasks the Prime Contractor (referred to as “Contractor” in the Scope of Work) will be asked to perform under the direction of the Commission Contract Manager. This section also describes the work assignment process, deliverables, and due dates.

Primary Tasks

The seven major categories of work are divided into seven tasks:

Tasks	Description of Task
1	Evaluate Energy Efficiency Opportunities in Existing Buildings
2	Support for New Construction Projects
3	Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage
4	Evaluate Energy Efficiency Opportunities in Water and Wastewater Treatment Facilities
5	Engineering Support
6	Program and Energy Efficiency Marketing
7	Administrative Support Services to Contract. (Contractor Only.)

Contractor may be asked to perform the following tasks as directed by the Contract Manager.

Task 1 – Evaluate Energy Efficiency Opportunities in Existing Buildings

Contractor will conduct facility energy audits and prepare technical reports identifying energy efficiency opportunities in public buildings or facilities as assigned. At each facility energy audit, a California registered professional engineer must be on site and sign off on the validity of the report recommendations. The energy audits may be comprehensive or technology specific at the direction of the Contract Manager. A comprehensive study includes a detailed analysis of all energy efficiency opportunities within the facility. A study may also be authorized for a single purpose project, focusing on a particular technology (e.g. lighting only). For comprehensive energy audits, the Commission may ask that the energy audit analysis and technical report be prepared according to the Commission’s Feasibility Study Guidelines. (P400-00-002)

Section IV – Scope of Work

Typical project areas to be considered in an energy audit include, but are not limited to the following:

- ? Lighting
 - Incandescent, fluorescent, HID lighting conversions, and LED exit signs
 - Traffic and Street lights
 - Occupancy sensors (ultrasonic or passive infrared)
- ? Heating, Ventilating and Air Conditioning (HVAC)
 - Upgrade natural gas fired boilers
 - Efficient cooling towers
 - Primary/secondary pumping
 - Heat recovery
 - Evaporative cooling
 - Variable speed, two speed and high efficiency motors
 - Packaged air conditioner or chiller replacement.
- ? Controls
 - Energy management systems
 - Modifications of existing controls and system operations
 - Dual duct conversions
 - Outside air economizer operations and modifications

Contractor will assist public agencies in the contract process, including preparing performance specifications. Upon completion of the energy audit and technical reports, the Contractor may be directed to develop performance specifications and provide other services as needed to assist a public agency in the construction of projects recommended in the audit. The Contract Manager will determine whether this work shall be included in the work authorization.

Task 2 –Support for New Construction Projects

Contractor will conduct reviews of new public facility designs, including developing and/or evaluating building computer simulations, and recommending cost effective design alternatives to increase building energy efficiency. Assist public agencies to exceed Title 24 Building Energy Standards. New Construction assistance goal is to provide support to exceed Title 24 Standards for energy savings by at least 10%.

The Contractor will be directed by the Contract Manager to advise the public agency and /or the agency's architect and mechanical engineers on energy efficient design alternatives including developing life-cycle cost comparisons of alternatives. This may include but is not limited to:

- ? Review and make recommendations on lighting systems, daylighting opportunities or design layouts.
- ? Review and make recommendations on building orientation, envelope features including energy optimized insulation and fenestration.
- ? Review and make recommendations on HVAC systems and energy management controls including identification of load shifting opportunities.
- ? Develop baseline and proposed building simulation models.
- ? Estimate incremental cost for alternatives and developing cost benefit analysis.

Section IV – Scope of Work

Contractor will evaluate and analyze the technical and economic feasibility of using energy and resource efficient building materials on a public facilities. Energy and resource efficient building materials include use of recycled materials, those with low embodied energy and those that can reduce waste generation at the construction/demolition site. The Contractor may be asked to evaluate the costs and benefits of the recommendations using life cycle cost analysis or other methods, as determined by the Contract Manager.

Task 3 – Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage

Contractor will evaluate the technical and economic feasibility of installing a cogeneration, distributive generation, renewable energy system (including landfill gas, photovoltaics, biomass, wind and fuel cells) and/or thermal energy storage system for public facility(ies). Depending on the nature of the project, the Contract Manager may require that a California registered professional engineer be on-site during data collection and approve the final study or report. The Contractor may be asked to evaluate project cost effectiveness using Commission financing. The Commission may ask that the feasibility study be prepared according to the Commission's *Guide to Preparing Feasibility Studies for Energy Efficiency Projects* (P400-00-002).

Task 4 – Evaluate Energy Efficiency Opportunities in Water and Wastewater Facilities.

Contractor will evaluate energy efficiency opportunities including on-site energy generation in water and wastewater facilities. Depending on the nature of the project, the Contract Manager may require that a California registered professional engineer be on-site during data collection and approve the final study or report. The Contractor may be asked to evaluate project cost effectiveness using Commission financing. The report will either be comprehensive or technology specific.

Typical project areas to be considered in the report include, but are not limited to, the following:

- Lighting improvements
- Heating, ventilating and air conditioning (HVAC) modifications and/or replacements
- Energy efficient motor and pump replacements, including variable speed drives
- Electrical load management systems and strategies
- Cogeneration optimization (wastewater only)
- Fuel cell analysis (wastewater only)
- Irrigation District efficiency projects

Once the report is completed, the Contractor may be directed to assist the customer in implementing energy projects by providing services to support the bid process.

Task 5 –Engineering Support Services

The Contractor may be assigned to provide engineering support for special projects. Examples include, but are not limited to:

- Evaluation of Energy Services Proposals: Perform independent review of energy project proposals submitted to public agencies. The Contractor may be assigned to review existing energy project proposals, designs, and other special projects on a case-by-case basis, as directed by the Contract Manager. In particular, the Commission is frequently asked to

Section IV – Scope of Work

assist local agencies to procure services from Energy Service Company's or to provide an independent third-party review of an existing Energy Service Company proposal.

- Commissioning: Recommend building and/or equipment Commissioning procedures and assist in oversight inspection and Commissioning of installed energy efficiency or energy related projects. Commissioning services could include:
 - Help in developing a Commissioning plan for a specific building; or
 - Reviewing and commenting on the adequacy of the commissioning protocols proposed by a design team for an entire building or energy system.
- Monitoring and Verification: Perform independent monitoring and verification of energy project installations to compare "actual" energy savings with those identified in the energy study or report. The Contractor may be asked to provide project troubleshooting using commissions and/or monitoring and verification tools.
- Utility Rate Analysis: Review current utility rates and determine whether the public agency could benefit by changing rates based on the recommended projects. The Contractor may also be assigned to review the current rates and evaluate the impacts of pending California Public Utility Commission (CPUC) rulemaking, especially for power generation projects (e.g. cogeneration, landfill gas). Also the Contractor may be assigned to evaluate the impact of current/ planned Demand Side Management, Demand Responsive, distributed generation incentives and their impact on project feasibility.

Task 6 – Program and Energy Efficiency Marketing

Contractor will provide program and energy efficiency marketing assistance. Contractor will assist in the development of marketing materials that may include case studies, energy efficiency program brochures and applications.

Task 7 – Administrative Support Services to Contract. (Contractor only.)

The Contractor will perform the following as required for the work performed by subcontractors during the contract period:

- ? At the direction of the Contract Manager, issue Commission prepared work authorizations which define the scope of work, the schedule of deliverables and the project budget for work to be done by subcontractors;
- ? Prepare and issue contract agreements with subcontractors that convey all provisions contained in the contract between the Commission and the Contractor for the review and approval of the Contract Manager;
- ? When directed by the Contract Manager, hire, through a competitive process, vendors or additional subcontractors to obtain needed products and services;
- ? When new subcontractors are hired or added, the Contractor shall submit proposed subcontractor contracts to the Commission for review and approval. At the same time, the Contractor shall provide the Commission with updated Disabled Veteran Owned Business Enterprise (DVBE) forms. The Contractor is responsible for the quality of all subcontractor work and the Commission will assign all work to the Contractor.

Section IV – Scope of Work

- ? Enforce subcontractor contract provisions, and in the event of failure of the subcontractor to satisfactorily perform services, recommend resolution to resolve the problem;
- ? Respond in a timely fashion to information requests or direction from the Contract Manager;
- ? Coordinate availability of subcontractors to meet needs of Commission staff;
- ? Require subcontractors, via a contract, to provide invoices which correctly identify personnel, actual hourly rates and direct expenses charged to each work authorization and provide back-up documentation for expenses;
- ? Complete a payment authorization form for each subcontractor invoice for which deliverables have been received and approved;
- ? Maintain a current contract spreadsheet capable of tracking subcontractor and Contractor work activity, subcontractor and Contractor invoice activity, and the status of work authorizations;
- ? Provide monthly progress reports to the Contract Manager;
- ? Process subcontractor requests for release of retained funds;
- ? Provide administrative and/or technical support for the programs, as authorized by the Contract Manager through administrative work authorizations;
- ? Provide verbal or written briefings regarding contract activities to the Commission or other entities as authorized by the Contract Manager; and
- ? Provide a draft and final contract report and abstract. A draft Final Report is due three months before the end of the contract. The Final Report is due no later than fifteen days before the end of the contract. The Final Report shall include a summary of:
 - The effectiveness of this contract in meeting the objectives of the program
 - Summary of the work accomplishments of the Contractor and team
 - Future activities recommended increasing the effectiveness of the programs and this contract.

Work Authorizations

This is a “work authorization” contract and no work shall be undertaken unless authorized by the Commission through a specific written document called a “work authorization”. Exhibit B of this RFQ is a sample of a work authorization.

The Contract Manager will prepare and issue the written work authorizations and may set a maximum price, budget, and schedule for the work to be performed.

1. The Contract Manager will work, in consultation with the Contractor, to assign work to either the Contractor or a subcontractor. Work assignments will be based upon:
 - Expertise required for the work.
 - Avoiding potential conflicts of interest
 - Availability
 - Ability to reach mutually acceptable cost for work needed.
 - Request of the local government, school, or other agency to use a specific subcontractor based on previous work, location, etc.

Section IV – Scope of Work

Deliverables and Due Dates

All work assignments will be made through specific work authorizations and will specify the schedule of deliverables. The Contractor will prepare and submit the following to the Contract Manager:

Monthly Progress Report. The Contractor shall prepare a monthly progress report that summarizes all activities conducted by the Contractor and team. This includes a summary of contract expenditures to date. The monthly progress report is due to the Contract Manager within 15 working days after the end of the month. The Contract Manager will specify the report format and the number of copies to be submitted. All monthly progress reports will coincide with the invoice period.

Invoice. The Contractor will prepare a monthly invoice for all contract expenses performed for assigned work authorizations. An advance copy of the invoice shall be sent to the Contract Manager to insure that all records are included and the invoice is for authorized work. The official invoice is to be submitted to the Commission's Accounting Office. The Contract Manager will specify the invoice format.

Feasibility Studies/Energy Audits/Other Deliverables. The Contract Manager will specify the number of required copies. Hardcopy and/or electronic copy on CD/disk may be requested. These copies are due to the Contract Manager according to the work authorization schedule. Draft reports are typically due approximately six weeks after the initial site visit and final reports are due approximately two weeks after the draft reports as specified in the work authorization.

Special Projects. Deliverables due according to the work authorization schedule.

Program Meetings and Briefings. At the request of the Contract Manager, the Contractor and subcontractors shall be available for meetings or provide written and/or verbal program briefings to the Commission's staff or others. The cost of meetings with public agencies will be included in each work authorization. The cost of meetings requested specifically by the Contractor will be borne solely by the Contractor. The Commission expects to hold no more than one (1) program briefing meeting per quarter.

Draft and Final Contract Report and Abstract. A draft Final Report is due three months prior to the end of the contract. The Final Report is due no later than fifteen days prior to the end of the contract. The Final Report shall include an analysis of:

- The work accomplishments of the Contract.
- The effectiveness of the Contract in meeting the objectives of the program
- Future activities recommended to increase the effectiveness of the program and this contract.

Section V. - Hypothetical Questions

Hypothetical Instructions

The following scenario is based on the Commission's actual experience with schools, local governments, hospitals, and colleges to become more energy efficient through various energy efficiency programs. Your response to these Hypothetical Illustrations shall be attached as a separate appendix to your SOQ.

Question #1:

You have just completed an energy audit report for the City of Atoz and submitted the draft report to the Commission for review and comment. After the Commission's Contract Manager reviews the draft report, he/she suggests changes to the organization of the report and requests a Time of Use rate analysis that will effect the payback calculations of several energy efficiency measures recommended. However, there is no money remaining in the work authorization. How would you handle this additional work request?

Question #2:

Six months ago your company completed an energy audit report for a K-12 school district through the Energy Commission's Bright Schools Program. The school district proceeded to implement the report recommendations and developed bid documents for the recommended energy efficiency improvements. During the job walk, several contractors indicated that the project recommendations are inappropriate and do not make sense and the light counts do not match the actual rooms. The Energy Commission contacts you for assistance. What will you do?

Question #3:

During the energy audit, the following data was collected from a detention facility:

Administration		Warehouse	
Area	100,000 sqft	Area	60,000 sqft
Number of lighting fixtures	2,100	Fixture type	HID
Fixture type	F42LL/T4,	Number of fixtures	75
Last lighting retrofit	F32T8	Wattage of each fixture	484
Wattage per fixture	59	Cooling Type	Evaporative Cooler
Cooling Type	Packaged AC Units		

Section V. - Hypothetical Questions

Detention Area		Electrical Load for the Entire Detention Facility	
Area	400,000 square feet	Month	Maximum Electric Demand (kw) from Utility Bills
Number of beds	400	January	825
Kwh per year	Not available	February	815
California Climate Zone	12	March	880
Main transformer size	2500 KVA	April	1400
Age of the transformer	15 years	May	1350
Number of chillers	2	June	1500
Capacity of each chiller	800 tons	July	1650
Age of chillers	15 years	August	1550
Numbers of boilers	2	September	1700
Steam production	480,000 lbm/day (saturated steam)	October	1100
Boiler efficiency	Not known	November	900
Age of the boilers	20 years	December	875
Boiler blow down	2,000 lbm/hr		
Boiler pressure	100 psig		
Deaerator pressure	6 psig		

The facility has a 20,000 square feet kitchen with an evaporative cooler. A 100 kW electric heater pre-heats the food between 11:30 a.m. and 12:30 p.m.

In order to ensure reliability of the standby equipment, half of the standby equipment is tested every Monday from 2:00 p.m. to 2:30 p. m. and the remaining standby equipment is tested every Thursday from 2:00 p. m. to 2:30 p. m.

Q 3-1. What is the approximate annual kWh usage of the facility? List all assumptions and show calculations.

Section V. - Hypothetical Questions

- Q 3-2. What energy efficiency measures will you recommend for this facility and why? List all assumptions and show calculations.
- Q 3-3. Using the above data only (without making any assumption), calculate the gallons of water you can save per year for this facility by suggesting an energy efficiency measure. Identify the measure and show your calculations. Your calculations should not exceed one page.
- Q 3-4. What operational and maintenance changes would you recommend for the facility and why?

Question #4:

A hospital has a day time peak demand of 3,000 kW. At night the demand drops to 2,000 kW. Most of the motors run at reduced load during the night. The hospital plans to install a 1,500 kW co-generation plant. This plant will run in parallel to the utility. This plant will run 24 hours a day at full load. The plant will supply approximately 1,500 kW of power to the hospital. The rest of the power will be supplied by the utility. Before the installation of the co-generation plant, the hospital's power factor is between 0.75 and 0.85.

- Q 4-1. What are the power quality related issues resulting from the operation of the co-generation plant? How will you solve them?
- Q 4-2. What operating power factor would you recommend for the co-generation plant? What parameters would you recommend to check before making any adjustment to the co-generation power factor?
- Q 4-3. List all the benefits and costs you would consider in evaluating the feasibility of a co-generation plant in a hospital. Provide an itemized list of the co-generation project expenses. Discuss the reality checks to be used to ensure that the cost estimates are accurate.
- Q 4-4. After the construction of the co-generation plant is completed, what are your recommendations to ensure that the savings from the co-generation plant are sustainable and reliable?

Question #5:

A 980 square feet portable classroom located in Fresno has a 2.0 ton electric heat pump. The classroom has 25 students and a teacher. The heat pump keeps the classroom cool all the time. When all the students are present in the class, the compressor is on for 70 percent of the time during the summer peak periods.

- Q 5-1. Based on the information provided, what is the problem with this classroom? How will you resolve it?
- Q 5-2. Provide a list of recommendations to ensure that the problem is solved permanently.
- Q 5-3. What steps would you take to mitigate lighting and HVAC equipment noise in portable classrooms?

Section VI. - Qualifications Evaluation

What Are The Evaluation Stages?

To analyze all SOQs, the Commission will organize a committee whose members have expertise in evaluation consulting services. The Committee will analyze the SOQs in three stages.

Stage One: Fulfillment of RFQ Mandatory Format

The Contracts Office will first identify those Bidders whose SOQs adhere to the mandatory format outlined in Section III.; Bidders who do not follow the mandatory format may be eliminated from the competition.

Stage Two: Evaluation of Qualifications

The Evaluation Committee will then review and score all remaining SOQs based on the Evaluation Criteria in Exhibit A. The preliminary final score for each SOQ reflects the average of the combined scores of all evaluation committee members. After the review, the Evaluation Committee will identify the top three Bidders and may schedule interviews.

Stage Three: Interviews

The Evaluation Committee may use patterned questions to conduct Bidder interviews. The Evaluation Committee may provide the top three Bidders with a copy to the questions to be addressed and a format for the structured interviews. Bidder responses to the questions will be scored based on the criteria in Exhibit A. Upon completion of the interviews, the Evaluation Committee may make adjustment to the scores and re-rank the top competitors.

The Evaluation committee may reject all Bidders and SOQs if none are considered in the best interest of the Commission.

ATTACHMENT 1

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION
Contracts Office

CONTRACTOR STATUS FORM

Rev 3/03

Contractor's Name _____

County _____

Address _____

Federal Employer ID

Phone

FAX

STATUS OF CONTRACTOR PROPOSING TO DO BUSINESS:

☐ Individual (Sole Proprietor) ☐ Limited Partnership ☐ General Partnership

☐ Corporation ☐ Limited Liability Corporation ☐ Other

INDIVIDUAL

If a sole proprietorship, state the true name of sole proprietor: _____

PARTNERSHIP

If a partnership, list each partner, including limited partners, stating their true name and their interest in the partnership: _____

CORPORATION

If a corporation, place and date of incorporation: _____

Date corporation was authorized by Sect. of State: _____

President: _____ Vice President: _____

Secretary: _____ Treasurer: _____

Agent for service of process and address if different from above: _____

LIMITED LIABILITY COMPANY

If a Limited Liability Company, date LLC was authorized by the Secretary of State: _____

Name(s) of manager(s) _____

Agent for service of process and address if different from above: _____

SMALL BUSINESS PREFERENCE

Are you claiming preference as a small business? ☐ YES – Attach approval letter from Office of Small and Minority Business.
☐ NO

Date you filed for small business preference: _____ Your small business ID number: _____

OTHER

Explain: _____

NOTE: This form must be completed or your proposal may be rejected.

ATTACHMENT 2.1

SMALL BUSINESS AND DVBE CERTIFICATION INSTRUCTIONS, AND F.A.Q.'S

Please Read These Instructions Carefully

Public Contract Code Section 10115 et seq. Establishes a contract participation goal of at least three percent (3%) for disabled veteran business enterprise (DVBE). This goal applies to a state agency's overall contracting program. State agencies have the discretion to apply the DVBE participation goal to individual contracts. DVBE participation requirements are included for this RFP. This solicitation attachment provides program information and bidder responsibilities for the DVBE Participation Program. Bidders must meet DVBE Participation Program requirements to be viewed as a responsive bidder and considered for contract award. Failure to submit a complete response may result in a non-responsive determination, in which case the Proposal will be rejected.

For Proposal response assistance, please contact the contracting official below:

_____ (Contract Officer Name)

California Energy Commission

1516 9th Street, MS-18

Sacramento, CA 95814

(916) _____

(916) 654-4423 (fax)

_____ (email address)

The Office of Small Business and DVBE Certification (OSDC) offers program information and may be reached at:

Department of General Services

Office of Small Business and DVBE Certification

707 3rd Street, 1st Floor, Room 400

West Sacramento, CA 95605

Homepage: <http://www.dgs.ca.gov/osbcr>

Receptionist: (916) 375-4940 or (800) 559-5529

24-Hour Recording and Mail Request, call (916) 322-5060

Fax: (916) 375-4050

DVBE PARTICIPATION PROGRAM COMPLIANCE OPTIONS

Before you begin to prepare your proposal response, you will need to determine which option you will use and document to meet DVBE Participation Program requirements.

See pages ____ of this RFP for information on the correct forms to fill out for DVBE compliance, or instructions for making a Good Faith Effort.

The OSDC address and phone for Small Business Preference and DVBE information is:

Department Of General Services
Office of Small Business and DVBE Certification
707 Third Street, 1st Floor, Rm 400
West Sacramento, CA 95798-9052
Phone No.: (800) 559-5529 (916) 375-4940

Small Business Certification

In order to receive Small Business Preference, Bidder must either be certified by the State Department of General Services, Office of Small Business and DVBE Certification (OSDC) as a small business, or be self-certified pursuant to the Federal Government.

DVBE Certification

- o Each DVBE firm listed on Attachment 2.3 must be formally certified as a DVBE by OSDC. The DVBE program is not a self-certification program. DVBE certification must be approved by OSDC by the notice of award date of the contract to be counted in meeting participation goals.
- o A copy of the certification letter approved by, or a copy of the certification form submitted to OSDC must be included in the proposal package.

To qualify as a DVBE, the DVBE must:

- 1) Be a California resident;
- 2) Own 51% of the firm and meet the requirements: in 3) and 4) below.
- 3) Provide to the OSDC, by no later than 5:00 p.m. on the date on which the proposal is due, an Award of Entitlement from the United States Department of Veterans Affairs or the United States Department of Defense, issued within 6 months of the date on which certification is sought, which would certify or declare the existence of a service-connected disability, of at least 10 percent, at the time of application for or renewal of certification as a DVBE, and
- 4) Meet all requirements set forth in Article 6 (commencing with Section 999) of Chapter 6, Division 4 of the California Military code.

The Internet addresses are:

OSDC Homepage: <http://www.pd.dgs.ca.gov/DVBE>

This internet site provides general information about the DVBE program and certification process.

DVBE list: <http://www.pd.dgs.ca.gov/resource.pdf>

OSDC maintains a list of certified DVBEs. The list is separated into three main subject areas: Commodities, Construction, and Services. Within each subject area, there are more specific areas of expertise. The Energy Commission does not have separate DVBE lists.

ANSWERS TO FREQUENTLY ASKED QUESTIONS

The following questions are among the most frequently asked regarding DVBE requirements:

Q: If I am awarded the contract, either with partial or full goal attainment documented, am I required to use the subcontractor/supplier proposed in my proposal?

A: Yes, unless you have requested and received substitution approval from the Commission. Written requests should include:

- The person's or firm's NAME to be substituted,
- The substitution reason,
- The reason a non-DVBE subcontractor is proposed, if applicable,
- Describe the business to be substituted including its business status as a sole proprietorship, partnership, corporation or other entity, and
- The certification status of the firm, if any.

See California Code of Regulations Section 1896.64 © & (d) for substitution criteria.

The request and the Commission's approval or disapproval is not construed as an excuse for noncompliance with any other provision of the law, including but not limited to the Subletting and Subcontracting Fair Practices Act or any other contract requirements relating to substitution of subcontractors. Failure to adhere to at least the DVBE participation proposed by the successful contractor may be cause for contract termination and recovery of damages under the rights and remedies due the State for default section of the contract(s) and any other penalties provided for by statute.

Q: Who notifies the subcontractor when an award is made?

A: Upon award to a prime contractor, the Commission notifies listed subcontractors of their contract participation. Primes are encouraged to notify their listed subcontractors immediately after an award is made to formalize their business agreements.

Q: What happens to proposals considered non-responsive to the DVBE Participation Program requirements?

A: Non-responsive proposals are rejected. Many are rejected because of:

- Incomplete documentation
- Documentation not received by bid due date
- Mathematical error related to the percentages
- Basing goal attainment on workforce composition

Q: If I am a disabled veteran business enterprise, can I meet the 3% contract goal as a single company?

A: Yes

Q: If my submitted proposal meets the contract goal and the Commission decides to make multiple awards to the contract, could my proposal be considered non-responsive?

A: No, the Commission's decision to make multiple awards will not jeopardize proposal compliance.

ATTACHMENT 2.2

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION
Contracts Office

PRIME BIDDER'S CERTIFICATION OF DISABLED VETERAN-OWNED BUSINESS PARTICIPATION

See Instructions on Reverse

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representations made herein and, to the best of my knowledge and belief, each firm set forth in this bid as a disabled veteran business enterprise complies with the relevant definition set forth in Section 1896.62(d) of Title 2, California Code of Regulations hereof.

In making this certification, I am aware of Section 12650 et seq. of the Government Code providing for the imposition of treble damages for making false claims against the State, and Section 10115.10 of the Public Contract Code making it a crime for intentionally making an untrue statement in this certificate.

COMPANY NAME/BIDDER (Please type or print)	RFP #
BIDDER'S SIGNATURE	DATE SIGNED
PRINTED NAME OF PERSON SIGNING	TITLE OF PERSON SIGNING (Business Owner/Chief Executive Officer)

NOTE: *If DVBE participation is proposed, this form must be completed and signed by the bidder or the proposal will be rejected.*

Bidder's Certification of DVBE Participation - Attachment 2.2

If the bidder is proposing to meet the DBVE participation goal, the bidder must sign a certification that each firm listed on Attachment 2.3 meets the legal definition of DVBE and the bidder is aware of the penalties for fraud.

- o Company Name - legal company name of prime bidder.
- o Bidder's Signature - person authorized (CEO) to sign.
- o Printed Name - printed name of person who signed.
- o Title - title of person signing - Business Owner, Chief Executive Officer, Manager.

Only the company (bidder) submitting the proposal must sign this certification.

ATTACHMENT 2.3
RFP _____

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION
Contracts Office

LIST OF DISABLED VETERAN OWNED BUSINESS PARTICIPATION

(1) Company Name	(2) Nature of Work	(3) Contracting With	(4) TIER	(5) Claimed 2) DVBE Value %	(6) Certification Letter from OSDC Attached
TOTAL				%	

NOTE: *If proposing participation goals, this form must be completed or your proposal will be rejected. See instructions on reverse of this form of the RFP.*

ATTACHMENT 2.3
RFP #_____

DVBE Participation List – Attachment 2.3

If the participation goals are partially or fully met, Attachment 2.3 must be completed detailing the type of work, the companies (subcontractors and vendors) proposed for DVBE participation, and all other related information.

Col. 1 - DVBE company name - each DVBE company must be certified by or have submitted Attachment 4 (application for DVBE certification) to OSDC by the proposal due date.

Col. 2 - Nature of Work - Type of Expertise, Technology, Service, Supplier, etc.

Col. 3 - Contracting with - Company name that the DVBE company is contracting with. For example, the bidder may be contracting with a company (XYZ, Inc.) who deals with a DVBE. Then XYZ, Inc. would be entered in Column 3.

Col. 4 - Tier - Contracting tier according to the following:

- 0 = Bidder;
- 1 = Primary subcontractor/supplier;
- 2 = Subcontractor/supplier of Level 1 subcontractor/ supplier;
- 3 = Subcontractor/supplier of Level 2 subcontractor/ supplier.

Col. 5 - Claimed DVBE, % value.

Percent of contract dollars committed to the DVBE listed. This percentage is the amount that will be paid to each DVBE company/vendor from the contract funds.

NOTE: This percentage is not the ownership of the company.

Col. 6 - Certification Letter attached.

This column is a checkpoint for you to ensure that all of the DVBE certification letters are in your proposal. If a certification letter is omitted, that DVBE company cannot be counted towards meeting the goals.

DVBE certification approval letter or a copy of the DVBE Application must be included in the proposal. DVBEs must be certified by the time of contract award in order to count in the participation goals.

You must clearly identify in the Work Statement, Tasks & Budget what services will be provided and the costs related to each DVBE.

ATTACHMENT 2.4

RFP _____

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION
Contracts Office

DOCUMENTATION OF GOOD FAITH EFFORTS

Section 1. ORGANIZATION CONTACTS

List below the contacts made in an effort to identify potential DVBEs for participation in this contract. Include dates, times (if known), contact names and phone numbers.

Agency	Name	Phone	Date/Time
A. CA Energy Commission		(916) 654-4392	
B. Other State Agencies			
C. DVBE Organizations			

Section 2. ADVERTISING

List the trade papers and DVBE focused papers in which you advertised for participation in this contract. Include the dates of advertisement.

Trade	Ad Date	Publication Name	Copy Attached

NOTE: *If your proposal does not meet the 3% disabled veteran participation goal, this form must be completed to meet "Good Faith Efforts." These are the minimum requirements, therefore failure to fully complete each section of this form will result in rejection of the proposal as nonresponsive.*

Attachment 2.4 (Continued)

Section 3. DVBEs CONSIDERED

- A. Attach Solicitation Sample or Phone Conversation.
- B. List DVBES that you contacted for participation in this contract along with the dates you sent the solicitations or called them.
- C. List DVBES that you considered for participation in this contract and state the reasons the DVBES were not selected.

[illegible]

NOTE: *If your proposal does not meet the 3% disabled veteran participation goal, this form must be completed to meet "Good Faith Efforts." These are the minimum requirements. Failure to complete each section of this form will result in rejection of the proposal as nonresponsive.*

ATTACHMENT 2.4 (CONTINUED)
INSTRUCTIONS FOR ATTACHMENT 2.4
DOCUMENTATION OF GOOD FAITH EFFORTS

If a bidder's proposal does not meet the participation goals, then the bidder must document its "good faith effort" to meet the participation goals. The minimum requirements for meeting good faith documentation under the law are CONTAINED in Attachment 2.4, therefore each item in Attachment 2.4 must be accomplished and documented. (Public Contract Code Part 10115.2) **IF THE PROPOSAL DOES NOT MEET THE 3% DVBE PARTICIPATION THEN, FAILURE TO PERFORM, COMPLETE AND SUBMIT ATTACHMENT 2.4 WILL BE CAUSE FOR REJECTION OF THE FINAL PROPOSAL AS NONRESPONSIVE TO THE GOOD FAITH EFFORTS REQUIREMENT.**

Information is available at:

DGS-DVBE Resources Packet – www.pd.dgs.ca.gov/resource.pdf – 916-375-4940, or 800-559-5529
California Energy Commission DVBE handbook – 916-654-4392

Part 1 - **ORGANIZATION CONTACTS**

List each contact by date, time, name, and phone number. Each bidder is required at a minimum to undertake steps A, B, C, and D, and to document all efforts under each step. [Public Contract Code Part 10115.2 (b)]. *The purpose of making each of these contacts is to obtain the resources/contact groups who can refer you to or provide you with lists of DVBEs.*

The DVBE list available from DGS consists of commodities and services (including consultant services).

Part 2 - **ADVERTISING**

Advertising is required as part of the good faith effort documentation.

- o Advertising must be made in at least two publications: one trade (e.g., work being performed in the project and reimbursed by the Commission) and one DVBE focused.
- o Both advertisements must appear not less than 14 calendar days prior to bid proposal submittal date, to allow reasonable time for consideration of DVBEs.
- o The advertisements for DVBE (including names of publications, dates of advertisement and copies of advertisements) must be documented in the bidder's proposal.

NOTE: *General circulation newspapers such as the Los Angeles Times or the Sacramento Bee are not acceptable, since neither one qualifies as a trade or focus publication.*

Part 3 - **DVBE'S RESPONDING AND CONSIDERED**

List and identify each DVBE that was contacted and state the reason why they were not selected. DVBE businesses considered must have appropriate qualifications for the work to be performed in the project.

DVBE participation is not limited to any specific portion of the project work. Participation may be from technical firms, but it may also come from nontechnical firms that are part of your daily business operations such as travel agencies, stationary supplies, delivery companies, etc.

NOTE: *The bidder must make actual contact with DVBEs. Services provided by DBVEs must be a reimbursable item under the project.*

ATTACHMENT 3

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has

CONTRACTOR CERTIFICATION CLAUSES

Std CCC (1-03)

made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. UNION ORGANIZING: Contractor hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.
5. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

CONTRACTOR CERTIFICATION CLAUSES

Std CCC (1-03)

- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
 - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
 - b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
 - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be:
 - (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
 - (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste

CONTRACTOR CERTIFICATION CLAUSES

Std CCC (1-03)

discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other government entity.

Attachment 4
RFQ 400-03-101
CUSTOMER REFERENCES

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION
CONTRACTS OFFICE

CUSTOMER REFERENCES

ATTACHMENT 4

Provide a minimum of 4 references, use additional pages as needed.

Reference #1

Name of Organization	
Address	
Contact Name	
Contact Title	
Contact Phone Number	
Describe the services and products your firm provided to the organization.	

ATTACHMENT 5A

STANDARD AGREEMENT

STD. 213 (NEW 02/98)

AGREEMENT NUMBER

400-03-XXX

1. This Agreement is entered into between the State Agency and the Contractor named below
STATE AGENCY'S NAME
State Energy Resources Conservation and Development Commission
CONTRACTOR'S NAME
2. The term of this Agreement is: to be completed by Commission
3. The maximum amount of this Agreement is: \$ to be completed by Commission
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement. These terms apply to (ECAA) funded work.

Exhibit A – Scope of Work

Page(s)

Exhibit B – Budget Detail and Payment

Page(s)

* Exhibit C – General Terms and Conditions

GTC-103

Number

(Dated)

Exhibit D – Special Terms and Conditions

Page(s)

Exhibit E – Additional Provisions

Page(s)

Exhibit F – Contact Persons

Page

*View at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CALIFORNIA
**Department of General
Services**
Use Only

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

State Energy Resources Conservation and Development Commission

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Cheryl Raedel, Contracts Office Manager

ADDRESS

1516 9th Street, Sacramento, CA 95814

☐ Exempt per

ATTACHMENT 5A

SCOPE OF WORK

PURPOSE

Contractor agrees to provide to the State Energy Resources Conservation and Development Commission (Commission) the services as described herein:

Primary Tasks

The seven major categories of work are divided into seven tasks:

Tasks	Description of Task
1	Evaluate Energy Efficiency Opportunities in Existing Buildings
2	Support for New Construction Projects
3	Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage
4	Evaluate Energy Efficiency Opportunities in Water and Wastewater Treatment Facilities
5	Engineering Support
6	Program and Energy Efficiency Marketing
7	Administrative Support Services to Contract. (Contractor Only.)

Contractor may be asked to perform the following tasks, as directed by the Contract Manager in a Work Authorization.

Task 1 – Evaluate Energy Efficiency Opportunities in Existing Buildings

Contractor will conduct facility energy audits and prepare technical reports identifying energy efficiency opportunities in public buildings or facilities as assigned. At each facility energy audit, a California registered professional engineer must be on site and sign off on the validity of the report recommendations. The energy audits may be comprehensive or technology specific at the direction of the Contract Manager. A comprehensive study includes a detailed analysis of all energy efficiency opportunities within the facility. A study may also be authorized for a single purpose project, focusing on a particular technology (e.g. lighting only). For comprehensive energy audits, the Commission may ask that the energy audit analysis and technical report be prepared according to the Commission's Feasibility Study Guidelines. (P400-00-002)

Typical project areas to be considered in an energy audit include, but are not limited to the following:

- ? Lighting
 - Incandescent, fluorescent, HID lighting conversions, and LED exit signs
 - Traffic and Street lights
 - Occupancy sensors (ultrasonic or passive infrared)

ATTACHMENT 5A

- ? Heating, Ventilating and Air Conditioning (HVAC)
 - Upgrade natural gas fired boilers
 - Efficient cooling towers
 - Primary/secondary pumping
 - Heat recovery
 - Evaporative cooling
 - Variable speed, two speed and high efficiency motors
 - Packaged air conditioner or chiller replacement.
- ? Controls
 - Energy management systems
 - Modifications of existing controls and system operations
 - Dual duct conversions
 - Outside air economizer operations and modifications

Contractor will assist public agencies in the contract process, including preparing performance specifications. Upon completion of the energy audit and technical reports, the Contractor may be directed to develop performance specifications and provide other services as needed to assist a public agency in the construction of projects recommended in the audit. The Contract Manager will determine whether this work shall be included in the work authorization.

Task 2 –Support for New Construction Projects

Contractor will conduct reviews of new public facility designs, including developing and/or evaluating building computer simulations, and recommending cost effective design alternatives to increase building energy efficiency. Assist public agencies to exceed Title 24 Building Energy Standards. New Construction assistance goal is to provide support to exceed Title 24 Standards for energy savings by at least 10%.

The Contractor will be directed by the Contract Manager to advise the public agency and /or the agency's architect and mechanical engineers on energy efficient design alternatives including developing life-cycle cost comparisons of alternatives. This may include but is not limited to:

- ? Review and make recommendations on lighting systems, daylighting opportunities or design layouts.
- ? Review and make recommendations on building orientation, envelope features including energy optimized insulation and fenestration.
- ? Review and make recommendations on HVAC systems and energy management controls including identification of load shifting opportunities.
- ? Develop baseline and proposed building simulation models.
- ? Estimate incremental cost for alternatives and developing cost benefit analysis.

Contractor will evaluate and analyze the technical and economic feasibility of using energy and resource efficient building materials on a public facilities. Energy and resource efficient building materials include use of recycled materials, those with low embodied energy and those that can reduce waste generation at the construction/demolition site. The Contractor may be asked to evaluate the costs and benefits of the recommendations using life cycle cost analysis or other methods, as determined by the Contract Manager.

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Task 3 – Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage

Contractor will evaluate the technical and economic feasibility of installing a cogeneration, distributive generation, renewable energy system (including landfill gas, photovoltaics, biomass, wind and fuel cells) and/or thermal energy storage system for public facility(ies). Depending on the nature of the project, the Contract Manager may require that a California registered professional engineer be on-site during data collection and approve the final study or report. The Contractor may be asked to evaluate project cost effectiveness using Commission financing. The Commission may ask that the feasibility study be prepared according to the Commission's *Guide to Preparing Feasibility Studies for Energy Efficiency Projects* (P400-00-002).

Task 4 – Evaluate Energy Efficiency Opportunities in Water and Wastewater Treatment Facilities.

Contractor will evaluate energy efficiency opportunities including on-site energy generation in water and wastewater treatment facilities. Depending on the nature of the project, the Contract Manager may require that a California registered professional engineer be on-site during data collection and approve the final study or report. The Contractor may be asked to evaluate project cost effectiveness using Commission financing. The report will either be comprehensive or technology specific.

Typical project areas to be considered in the report include, but are not limited to, the following:

- Lighting improvements
- Heating, ventilating and air conditioning (HVAC) modifications and/or replacements
- Energy efficient motor and pump replacements, including variable speed drives
- Electrical load management systems and strategies
- Cogeneration optimization (wastewater only)
- Fuel cell analysis (wastewater only)

Once the report is completed, the Contractor may be directed to assist the customer in implementing energy projects by providing services to support the bid process.

Task 5 –Engineering Support Services

The Contractor may be assigned to provide engineering support for special projects. Examples include, but are not limited to:

- Evaluation of Energy Services Proposals: Perform independent review of energy project proposals submitted to public agencies. The Contractor may be assigned to review existing energy project proposals, designs, and other special projects on a case-by-case basis, as directed by the Contract Manager. In particular, the Commission is frequently asked to assist local agencies to procure services from Energy Service Company's or to provide an independent third-party review of an existing Energy Service Company proposal.
- Commissioning: Recommend building and/or equipment Commissioning procedures and assist in oversight inspection and Commissioning of installed energy efficiency or energy related projects. Commissioning services could include:
 - Help in developing a Commissioning plan for a specific building; or

ATTACHMENT 5A

- Reviewing and commenting on the adequacy of the commissioning protocols proposed by a design team for an entire building or energy system.
- Monitoring and Verification: Perform independent monitoring and verification of energy project installations to compare “actual” energy savings with those identified in the energy study or report. The Contractor may be asked to provide project troubleshooting using commissions and/or monitoring and verification tools.
- Utility Rate Analysis: Review current utility rates and determine whether the public agency could benefit by changing rates based on the recommended projects. The Contractor may also be assigned to review the current rates and evaluate the impacts of pending California Public Utility Commission (CPUC) rulemaking, especially for power generation projects (e.g. cogeneration, landfill gas). Also the Contractor may be assigned to evaluate the impact of current/ planned Demand Side Management, Demand Responsive, distributed generation incentives and their impact on project feasibility.

Task 6 – Program and Energy Efficiency Marketing

Contractor will provide program and energy efficiency marketing assistance. Contractor will assist in the development of marketing materials that may include case studies, energy efficiency program brochures and applications.

Task 7 – Administrative Support Services to Contract. (Contractor only.)

The Contractor will perform the following as required for the work performed by subcontractors during the contract period:

- ? At the direction of the Contract Manager, issue Commission prepared work authorizations which define the scope of work, the schedule of deliverables and the project budget for work to be done by subcontractors;
- ? Prepare and issue contract agreements with subcontractors that convey all provisions contained in the contract between the Commission and the Contractor for the review and approval of the Contract Manager;
- ? When directed by the Contract Manager, hire, through a competitive process, vendors or additional subcontractors to obtain needed products and services;
- ? When new subcontractors are hired or added, the Contractor shall submit proposed subcontractor contracts to the Commission for review and approval. At the same time, the Contractor shall provide the Commission with updated Disabled Veteran Owned Business Enterprise (DVBE) forms. The Contractor is responsible for the quality of all subcontractor work and the Commission will assign all work to the Contractor.
- ? Enforce subcontractor contract provisions, and in the event of failure of the subcontractor to satisfactorily perform services, recommend resolution to resolve the problem;
- ? Respond in a timely fashion to information requests or direction from the Contract Manager;
- ? Coordinate availability of subcontractors to meet needs of Commission staff;
- ? Require subcontractors, via a contract, to provide invoices which correctly identify personnel, actual hourly rates and direct expenses charged to each work authorization and provide back-up documentation for expenses;
- ? Pay subcontractors promptly, within 5 working days, upon receipt of payment from the Commission;
- ? Complete a payment authorization form for each subcontractor invoice for which deliverables have been received and approved;

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- ? Maintain a current contract spreadsheet capable of tracking subcontractor and Contractor work activity, subcontractor and Contractor invoice activity, and the status of work authorizations;
- ? Provide monthly progress reports to the Contract Manager;
- ? Process subcontractor requests for release of retained funds;
- ? Provide administrative and/or technical support for the programs, as authorized by the Contract Manager through administrative work authorizations;
- ? Provide verbal or written briefings regarding contract activities to the Commission or other entities as authorized by the Contract Manager; and
- ? Provide a draft and final contract report and abstract. A draft Final Report is due three months before the end of the contract. The Final Report is due no later than fifteen days before the end of the contract. The Final Report shall include a summary of:
 - The effectiveness of this contract in meeting the objectives of the program
 - Summary of the work accomplishments of the Contractor and team
 - Future activities recommended increasing the effectiveness of the programs and this contract.

Work Authorizations

This is a “work authorization” contract and no work shall be undertaken unless authorized by the Commission through a specific written document called a “work authorization”. Exhibit B of this RFQ is a sample of work authorization.

The Contract Manager will prepare and issue the written work authorizations and may set a maximum price, budget, and schedule for the work to be performed.

The Contract Manager will work, in consultation with the Contractor, to assign work to either the Contractor or a subcontractor. The following will be considered when determining work assignments:

- Expertise required for the work.
- Avoiding potential conflicts of interest
- Availability
- Ability to reach mutually acceptable cost for work needed.
- Request of the local government, school, or other agency to use a specific subcontractor based on previous work, location, etc.

Deliverables and Due Dates

All work assignments will be made through specific work authorizations and will specify the schedule of deliverables. The Contractor will prepare and submit the following to the Contract Manager:

Monthly Progress Report. The Contractor shall prepare a monthly progress report that summarizes all activities conducted by the Contractor and team. This includes a summary of contract expenditures to date. The monthly progress report is due to the Contract Manager within 15 working days after the end of the month. The Contract Manager will specify the report format and the number of copies to be submitted. All monthly progress reports will coincide with the invoice period.

Invoice. The Contractor will prepare a monthly invoice for all contract expenses performed for assigned work authorizations. An advance copy of the invoice shall be sent to the Contract Manager to insure that

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all records are included and the invoice is for authorized work. The official invoice is to be submitted to the Commission's Accounting Office. The Contract Manager will specify the invoice format.

Feasibility Studies/Energy Audits/Other Deliverables. The Contract Manager will specify the number of required copies. Hardcopy and/or electronic copy on CD/disk may be requested. These copies are due to the Contract Manager according to the work authorization schedule. Draft reports are typically due approximately six weeks after the initial site visit and final reports are due approximately two weeks after the draft reports as specified in the work authorization.

Special Projects. Deliverables due according to the work authorization schedule.

Program Meetings and Briefings. At the request of the Contract Manager, the Contractor and subcontractors shall be available for meetings or provide written and/or verbal program briefings to the Commission's staff or others. The cost of meetings with public agencies will be included in each work authorization. The cost of meetings requested specifically by the Contractor will be borne solely by the Contractor. The Commission expects to hold no more than one (1) program briefing meeting per quarter.

Draft and Final Contract Report and Abstract. A draft Final Report is due three months prior to the end of the contract. The Final Report is due no later than fifteen days prior to the end of the contract. The Final Report shall include an analysis of:

- The work accomplishments of the Contract.
- The effectiveness of the Contract in meeting the objectives of the program
- Future activities recommended to increase the effectiveness of the program and this contract

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Budget Detail and Payment Provision

The following clauses may or may not be included, the Commission will revise as necessary when developing this Exhibit for the Agreement.

1. **INVOICING PROCEDURES:** For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.

Invoices shall include the Agreement Number and shall be submitted in duplicate not more frequently than monthly in arrears to:

California Energy Commission
Accounting Office, MS-2
1516 9th Street, First Floor
Sacramento, California 95814

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

3. **TRAVEL AND PER DIEM RATES:** Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to nonrepresented state employees. Contractor may obtain current rates from the Commission Contract Officer. Travel expenses in excess of the state rates cannot be reimbursed.

4. **RETENTION:** The State shall retain from each invoice an amount equal to 10% of that invoice. The retained amount shall be held by the Commission and released to Contractor only upon the Commission's approval that the Contractor has satisfactorily completed all of the required services and the Final Report (if required) has been received and accepted.

If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task.

Contractor shall invoice the State for retention withheld by the Commission.

ATTACHMENT 5A

5. **PAYMENT TERMS:**

- ☐ *Monthly Flat Rate* ☐ *Quarterly Flat Rate* ☐ *One –Time Payment*
☐ *Itemized Monthly or Quarterly Invoice*
☐ *Advance Payment Not to Exceed \$_____ or _____% of Contract Amount*
☐ *Reimbursement/Revenue*
☐ *Other (Explain) (i.e. lump sum/deliverable)*

6. **CONDITIONS:**

- A. No payment shall be made in advance of services rendered.
- B. A request for payment must include an invoice with cost backup, such as, travel receipts (where appropriate) receipts for equipment or supplies, copies of subcontractor's invoice, deliverables as required by the Agreement, and written progress reports.
- C. Invoices shall identify charges by tasks, personnel, labor rates and hours, and expenses authorized by either this Agreement or subsequent Work Authorizations.
- D. Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. Contractor will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the State disputes the submitted invoice.
- E. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927.
- F. Final invoice must be received by the Commission no later than 60 calendar days after the Agreement termination date.
- G. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.

7. **BUDGET DETAIL**

The Commission will insert the budget detail during the development of the Agreement.

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GENERAL TERMS AND CONDITIONS

PLEASE NOTE: The General Terms and Conditions will be included in the Agreement by reference to internet site: www.dgs.ca.gov/contracts, choose **Standard Language for Use in Standard Agreements** or if this Agreement is with another State agency, choose **Interagency Agreement**. The exact terms to be used will be those appearing on the website the date the Agreement is signed by Contractor.

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Special Terms and Conditions

1. **CONTRACT MANAGEMENT:**

- A. Contractor may change Project Manager but the Commission reserves the right to approve any substitution of the Project Manager.
- B. The Commission may change the Contract Manager by notice given Contractor at any time signed by the Contract Officer.
- C. Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Commission Contract Manager. In this connection, Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Commission personnel for the performance of services, which are the responsibility of Contractor unless the Commission Contract Manager previously agrees to such utilization in writing, and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing, coordinating or monitoring functions.

2. **STANDARD OF PERFORMANCE:** Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Commission Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply: Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the Commission Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission.
- B. The Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Commission directs the Contractor not to reperform a task; the Commission Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

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3. **SUBCONTRACTS:** Contractor shall enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of, the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Commission staff, and submitting completed products to the Commission Contract Manager.
- C. All subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C); 2) further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the Commission Contract Manager; and the confidentiality provisions in the Reports paragraph of this Agreement.
- D. Additions, Removal or Substitutions of Subcontractors

The Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Commission or Contractor requires the replacement or addition of subcontractor(s), the subcontractor(s) shall be selected using 1). A competitive bid process conducted in conformance with the State's and the Commission's procedures for competitive bids. For example, awards shall be made to the lowest bidder meeting the requirements of the bid document and obtaining a minimum of three bids. Contractor's competitive bid process shall be approved by the Commission Contract Manager and Contract Officer prior to release of the bid document. 2). The Commission may direct Contractor to sole source a subcontract with a specific firm, once the Commission Contract Manager has obtained sole source approval via Commission internal procedures. The Commission Contract Manager shall provide justification for the sole source subcontract to the Contracts Officer using the "Subcontractor Add" memo described below.
- 2) The Commission Contract manager shall complete and submit to the Commission Contract Officer a "Subcontractor Add" memo. This memo identifies the new

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subcontractor and what bidding method was used to obtain subcontractors (competitive or sole source).

- 3) Contractor shall submit any proposed subcontracts not originally identified in Contractor's proposal, or any substitution of subcontracts to the Commission for its approval prior to Contractor entering into it. Upon the termination of any subcontract, the Commission Contract Manager shall be notified immediately.

4. **PERFORMANCE EVALUATION:**

Consistent with Public Contract Code Sections 10367 and 10369, the Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Commission and the DGS defending his or her performance. The Contractor's statement shall be filed with the evaluation in the Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.

5. **REPORTS:**

- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepared a comprehensive Final Report, on a schedule as provided in Exhibit A.
- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:
California Energy Commission
Project Title
Contractor Number
By (Contractor)
- C. **Ownership:** Each report shall become the property of the Commission.
- D. **Non-Disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Commission Contract Manager, except as provided in F, below. Permission to disclose information on one occasion or public hearings held by the Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Contract, or at public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Commission or any other party, based on information received from the Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- E. **Confidentiality**
No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees

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or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the Contract Manager, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager or Contract Officer.

Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.

- F. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

"LEGAL NOTICE"

"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."

6. **CONTRACT DATA, OWNERSHIP RIGHTS:**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Commission and shall belong to the Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.

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- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at the Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Commission of the Final Report herein.
- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Commission of any contemplated action and the Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Commission so elects, the expense of further preserving data shall be paid for by the Commission. Contractor agrees that the Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

6. **RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART**

The Contractor, by signing this Contract, expressly grants to the Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Contract a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

Contractor, by signing this Contract, expressly conveys to the Commission all ownership of the physical works of art and fine art produced under this Contract. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Contract.

Contractor shall obtain these same rights for the Commission from all subcontractors and others who produce copyrightable material, works of art, or works of fine art under this Contract. Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Commission from the subcontractor.

- 7. **PUBLIC HEARINGS:** If public hearings on the scope of work are held during the period of the Contract, Contractor will make available to testify the personnel assigned to this Agreement. The Commission will reimburse Contractor for compensation and travel of the personnel at the Contract rates for the testimony which the Commission requests.

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8. **DISPUTES:** In the event of a Contract dispute or grievance between Contractor and the Commission, both parties shall follow the following two-step procedure. Contractor shall continue with the responsibilities under this contract during any dispute.

A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Commission Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Commission Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer decision, the Contractor may appeal to the second level.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Commission of the decision at a Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

B. Binding Arbitration

Should the Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

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The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

9. **TERMINATION:**

The parties agree that because the Commission is a state entity and contracts on behalf of all Californian rate payers, it is necessary for the Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Commission under the terms set forth below is an essential term of the Agreement, without which the Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Commission, the Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Commission.

This Agreement may be terminated for any reason set forth below.

A. **With Cause**

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Commission; or

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- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

10. **WAIVER:** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Commission to thereafter enforce each and every such provision.
11. **CAPTIONS:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.
12. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE:** In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.
13. **NOTICE:** Notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified on page one of this Agreement. Delivery by fax or e-mail is not considered notice for the purpose of this Agreement.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.

14. **STOP WORK:** The Commission Contract Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.
 - A. **Compliance:** Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.

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- B. **Equitable Adjustment:** An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. **Revoking a Stop Work Order:** Contractor shall resume the stopped work only upon receipt of written instructions from the Commission Contract Officer canceling the stop work order.

16. **INTERPRETATION OF TERMS**

Any inconsistency between the terms of any exhibits shall be resolved in favor of Exhibit A (Scope of Work) and Exhibit E (Additional Provisions).

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Additional Provisions

The following clauses may or may not be included in agreement, Contracts Officer to decide when developing this Exhibit if any of the following clauses apply to the specific scope of work or if an additional clause or term is needed.

1. **CONFIDENTIALITY:**

A. Information Considered Confidential

All contractor information considered confidential at the commencement of this Agreement is designated in the attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, the Parties have identified in the attachment to this exhibit, specific confidential information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the confidential information and presented in a sealed package to the Commission Contracts Officer. (Non-confidential deliverables are submitted to the Contract Manager.) All confidential information will be contained in the "confidential" volume, no confidential information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of confidential information specified in 20 CCR 2505 . The Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the attachment to this exhibit.

D. Disclosure of Confidential Information

Disclosure of confidential information by the Commission may be made only pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

2. **PROPOSAL INTERPRETATION:** This project shall be conducted in accordance with the terms and conditions of Commission Request for Proposal, Invitation for Bid or Request for Qualifications number _____, titled _____, Contractor's proposal dated _____ and this Agreement. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal, this Agreement shall be considered controlling.

3. **WORK AUTHORIZATION PROCESS:** The Commission Contract Manager shall prepare a Work Authorization.(WA) directing the work the Contractor provides. All WA shall be in writing,

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numbered sequentially and approved by the Contractor's Project Manager and Commission's Contract Manager before beginning work. The Commission Contract Manager shall file all signed WA with the Commission Contracts Office. Each WA shall detail the following:

1. Detailed scope of work and what task the WA falls within related to this Agreement, objective or goals, the technology area and identification of the Contract/subcontractor team.
 2. All significant materials to be developed or services delivered. Identification of any materials to be furnished by the Commission to the Contractor. The due dates for materials or services performed under the WA. The time period for entire WA. Estimated budget including person hours, hourly rates, travel expenses, and total cost of the WA.
- A. The Commission reserves the right to require the Contractor to stop or suspend work on any WA. The Commission Contract Manager shall provide in writing to the Contractor's Project Manager notice of the date work is halted or suspended. Costs incurred to that date shall be reimbursed in accordance with the termination clause.
- B. The actual costs of a completed WA shall not exceed the authorized amount, except under the following condition:
- If, in the performance of the work, the Contractor determines that the actual costs will exceed the estimated costs, Contractor shall immediately notify the Commission Contract Manager. Upon such notification, the Commission Contract Manager may:
- 1) Alter the scope of the WA to accomplish the work within the estimated costs; or
 - 2) Augment the dollar amount of the WA via an amendment; or
 - 3) Authorize the Contractor to complete the work for the actual costs; or
 - 4) Terminate the WA.
- C. Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent contract, other than as provided pursuant to this Agreement, nor in any way amends or supersedes any of the other provisions of this Agreement.

4. CONFLICT OF INTEREST:

- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall report its findings in its progress report.
- B. Contractor shall submit a completed Fair Political Practices Commission Form 700, "Statement of Economic Interests" for each consultant as directed by the Commission's Contract Manager in consultation with the Commission's Chief Counsel's Office to file a statement.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. This does not

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apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than 10 percent of the total monetary value of the consulting services contract.

D. Bidding Activities:

- 1) Contractor and each subcontractor shall agree not to bid as an independent consultant on any of the following:
 - a) An RFP or project on which Contractor or any subcontractor has provided assistance under this Contract.
 - b) Every related RFP or subject that currently receives assistance or receives assistance during this Contract under _____ *[fill in program]* or intends to apply for such assistance under any of the above programs and makes that fact known to Contractor or Contractor team members.

2) Reviewing, Evaluation & Assistance Activities

Contractor and each team member shall be disqualified from participating in the review, evaluation, or assistance of:

- a) Any project seeking assistance under the programs listed above for which Contractor has become an independent consultant in a situation not covered by clause D.1; or,
- b) Any project for which, within twelve (12) months prior to the start date of this Contract or at any time during this Contract, it has provided assistance under a separate contract to the project proponent that is seeking assistance for the same project under any of the above programs.

3) Subcontractors

Contractor shall require each of its subcontractors at any level who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by the Commission Contract Manager, and shall furnish the Commission with evidence thereof. The terms of this paragraph shall remain in effect for the duration of this Contract.

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NAMES AND ADDRESSES OF AGREEMENT REPRESENTATIVES

Commission Contract Manager: NAME, MS-?? California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916)??-???? Fax: (916)??-???? e-mail: ???@energy.state.ca.us	Contractor Project Manager: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Commission Contract Officer: Peg Pigeon, MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654-7093 Fax: (916) 654-4423 e-mail: ppigeon@energy.state.ca.us Deliver confidential deliverables to this location only.	Contractor Contract Officer: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Invoices, Progress Reports and Non-Confidential Deliverables to: Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4401 Fax: 916-653-1435 e-mail: awilliams@energy.state.ca.us	
Legal Notices: Cheryl Raedel, MS-18 Manager, Contracts Office California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4392 Fax: 916-654-4423 e-mail: craedel@energy.state.ca.us	(contractor legal person)

ATTACHMENT 5B

STANDARD AGREEMENT

STD. 213 (NEW 02/98)

AGREEMENT NUMBER

400-03-XXX

1. This Agreement is entered into between the State Agency and the Contractor named below
STATE AGENCY'S NAME
State Energy Resources Conservation and Development Commission
CONTRACTOR'S NAME
2. The term of this Agreement is: to be completed by Commission
3. The maximum amount of this Agreement is: \$ to be completed by Commission
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement. These terms apply to (PVEA-LJEA) federal funded work.
 - Exhibit A – Scope of Work Page(s)
 - Exhibit B – Budget Detail and Payment Page(s)
 - * Exhibit C – General Terms and Conditions GTC-103 Number (Dated)
 - Exhibit D – Special Terms and Conditions Page(s)
 - Exhibit E – Additional Provisions Page(s)
 - Exhibit E, Attachment 1 - Federal Language
 - Exhibit E, Attachment 1, Appendix B, Federal Intellectual Property Provisions
 - Exhibit F – Contact Persons Page

*View at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CALIFORNIA
**Department of General
Services**
Use Only

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

State Energy Resources Conservation and Development Commission

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Cheryl Raedel, Contracts Office Manager

ADDRESS

1516 9th Street, Sacramento, CA 95814

☐ Exempt per

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SCOPE OF WORK

PURPOSE

Contractor agrees to provide to the State Energy Resources Conservation and Development Commission (Commission) the services as described herein:

Primary Tasks

The seven major categories of work are divided into seven tasks:

Tasks	Description of Task
1	Evaluate Energy Efficiency Opportunities in Existing Buildings
2	Support for New Construction Projects
3	Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage
4	Evaluate Energy Efficiency Opportunities in Water and Wastewater Treatment Facilities
5	Engineering Support
6	Program and Energy Efficiency Marketing
7	Administrative Support Services to Contract. (Contractor Only.)

Contractor may be asked to perform the following tasks, as directed by the Contract Manager, in a Work Authorization.

Task 1 – Evaluate Energy Efficiency Opportunities in Existing Buildings

Contractor will conduct facility energy audits and prepare technical reports identifying energy efficiency opportunities in public buildings or facilities as assigned. At each facility energy audit, a California registered professional engineer must be on site and sign off on the validity of the report recommendations. The energy audits may be comprehensive or technology specific at the direction of the Contract Manager. A comprehensive study includes a detailed analysis of all energy efficiency opportunities within the facility. A study may also be authorized for a single purpose project, focusing on a particular technology (e.g. lighting only). For comprehensive energy audits, the Commission may ask that the energy audit analysis and technical report be prepared according to the Commission's Feasibility Study Guidelines. (P400-00-002)

Typical project areas to be considered in an energy audit include, but are not limited to the following:

- ? Lighting
 - Incandescent, fluorescent, HID lighting conversions, and LED exit signs
 - Traffic and Street lights
 - Occupancy sensors (ultrasonic or passive infrared)

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- ? Heating, Ventilating and Air Conditioning (HVAC)
 - Upgrade natural gas fired boilers
 - Efficient cooling towers
 - Primary/secondary pumping
 - Heat recovery
 - Evaporative cooling
 - Variable speed, two speed and high efficiency motors
 - Packaged air conditioner or chiller replacement.
- ? Controls
 - Energy management systems
 - Modifications of existing controls and system operations
 - Dual duct conversions
 - Outside air economizer operations and modifications

Contractor will assist public agencies in the contract process, including preparing performance specifications. Upon completion of the energy audit and technical reports, the Contractor may be directed to develop performance specifications and provide other services as needed to assist a public agency in the construction of projects recommended in the audit. The Contract Manager will determine whether this work shall be included in the work authorization.

Task 2 –Support for New Construction Projects

Contractor will conduct reviews of new public facility designs, including developing and/or evaluating building computer simulations, and recommending cost effective design alternatives to increase building energy efficiency. Assist public agencies to exceed Title 24 Building Energy Standards. New Construction assistance goal is to provide support to exceed Title 24 Standards for energy savings by at least 10%.

The Contractor will be directed by the Contract Manager to advise the public agency and /or the agency's architect and mechanical engineers on energy efficient design alternatives including developing life-cycle cost comparisons of alternatives. This may include but is not limited to:

- ? Review and make recommendations on lighting systems, daylighting opportunities or design layouts.
- ? Review and make recommendations on building orientation, envelope features including energy optimized insulation and fenestration.
- ? Review and make recommendations on HVAC systems and energy management controls including identification of load shifting opportunities.
- ? Develop baseline and proposed building simulation models.
- ? Estimate incremental cost for alternatives and developing cost benefit analysis.

Contractor will evaluate and analyze the technical and economic feasibility of using energy and resource efficient building materials on a public facilities. Energy and resource efficient building materials include use of recycled materials, those with low embodied energy and those that can reduce waste generation at the construction/demolition site. The Contractor may be asked to evaluate the costs and benefits of the recommendations using life cycle cost analysis or other methods, as determined by the Contract Manager.

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Task 3 – Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage

Contractor will evaluate the technical and economic feasibility of installing a cogeneration, distributive generation, renewable energy system (including landfill gas, photovoltaics, biomass, wind and fuel cells) and/or thermal energy storage system for public facility(ies). Depending on the nature of the project, the Contract Manager may require that a California registered professional engineer be on-site during data collection and approve the final study or report. The Contractor may be asked to evaluate project cost effectiveness using Commission financing. The Commission may ask that the feasibility study be prepared according to the Commission's *Guide to Preparing Feasibility Studies for Energy Efficiency Projects* (P400-00-002).

Task 4 – Evaluate Energy Efficiency Opportunities in Water and Wastewater Treatment Facilities.

Contractor will evaluate energy efficiency opportunities including on-site energy generation in water and wastewater treatment facilities. Depending on the nature of the project, the Contract Manager may require that a California registered professional engineer be on-site during data collection and approve the final study or report. The Contractor may be asked to evaluate project cost effectiveness using Commission financing. The report will either be comprehensive or technology specific.

Typical project areas to be considered in the report include, but are not limited to, the following:

- Lighting improvements
- Heating, ventilating and air conditioning (HVAC) modifications and/or replacements
- Energy efficient motor and pump replacements, including variable speed drives
- Electrical load management systems and strategies
- Cogeneration optimization (wastewater only)
- Fuel cell analysis (wastewater only)

Once the report is completed, the Contractor may be directed to assist the customer in implementing energy projects by providing services to support the bid process.

Task 5 –Engineering Support Services

The Contractor may be assigned to provide engineering support for special projects. Examples include, but are not limited to:

- Evaluation of Energy Services Proposals: Perform independent review of energy project proposals submitted to public agencies. The Contractor may be assigned to review existing energy project proposals, designs, and other special projects on a case-by-case basis, as directed by the Contract Manager. In particular, the Commission is frequently asked to assist local agencies to procure services from Energy Service Company's or to provide an independent third-party review of an existing Energy Service Company proposal.
- Commissioning: Recommend building and/or equipment Commissioning procedures and assist in oversight inspection and Commissioning of installed energy efficiency or energy related projects. Commissioning services could include:
 - Help in developing a Commissioning plan for a specific building; or

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- Reviewing and commenting on the adequacy of the commissioning protocols proposed by a design team for an entire building or energy system.
- Monitoring and Verification: Perform independent monitoring and verification of energy project installations to compare “actual” energy savings with those identified in the energy study or report. The Contractor may be asked to provide project troubleshooting using commissions and/or monitoring and verification tools.
- Utility Rate Analysis: Review current utility rates and determine whether the public agency could benefit by changing rates based on the recommended projects. The Contractor may also be assigned to review the current rates and evaluate the impacts of pending California Public Utility Commission (CPUC) rulemaking, especially for power generation projects (e.g. cogeneration, landfill gas). Also the Contractor may be assigned to evaluate the impact of current/ planned Demand Side Management, Demand Responsive, distributed generation incentives and their impact on project feasibility.

Task 6 – Program and Energy Efficiency Marketing

Contractor will provide program and energy efficiency marketing assistance. Contractor will assist in the development of marketing materials that may include case studies, energy efficiency program brochures and applications.

Task 7 – Administrative Support Services to Contract. (Contractor only.)

The Contractor will perform the following as required for the work performed by subcontractors during the contract period:

- ? At the direction of the Contract Manager, issue Commission prepared work authorizations which define the scope of work, the schedule of deliverables and the project budget for work to be done by subcontractors;
- ? Prepare and issue contract agreements with subcontractors that convey all provisions contained in the contract between the Commission and the Contractor for the review and approval of the Contract Manager;
- ? When directed by the Contract Manager, hire, through a competitive process, vendors or additional subcontractors to obtain needed products and services;
- ? When new subcontractors are hired or added, the Contractor shall submit proposed subcontractor contracts to the Commission for review and approval. At the same time, the Contractor shall provide the Commission with updated Disabled Veteran Owned Business Enterprise (DVBE) forms. The Contractor is responsible for the quality of all subcontractor work and the Commission will assign all work to the Contractor.
- ? Enforce subcontractor contract provisions, and in the event of failure of the subcontractor to satisfactorily perform services, recommend resolution to resolve the problem;
- ? Respond in a timely fashion to information requests or direction from the Contract Manager;
- ? Coordinate availability of subcontractors to meet needs of Commission staff;
- ? Require subcontractors, via a contract, to provide invoices which correctly identify personnel, actual hourly rates and direct expenses charged to each work authorization and provide back-up documentation for expenses;
- ? Pay subcontractors promptly, within 5 working days, upon receipt of payment from the Commission;
- ? Complete a payment authorization form for each subcontractor invoice for which deliverables have been received and approved;

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- ? Maintain a current contract spreadsheet capable of tracking subcontractor and Contractor work activity, subcontractor and Contractor invoice activity, and the status of work authorizations;
- ? Provide monthly progress reports to the Contract Manager;
- ? Process subcontractor requests for release of retained funds;
- ? Provide administrative and/or technical support for the programs, as authorized by the Contract Manager through administrative work authorizations;
- ? Provide verbal or written briefings regarding contract activities to the Commission or other entities as authorized by the Contract Manager; and
- ? Provide a draft and final contract report and abstract. A draft Final Report is due three months before the end of the contract. The Final Report is due no later than fifteen days before the end of the contract. The Final Report shall include a summary of:
 - The effectiveness of this contract in meeting the objectives of the program
 - Summary of the work accomplishments of the Contractor and team
 - Future activities recommended increasing the effectiveness of the programs and this contract.

Work Authorizations

This is a “work authorization” contract and no work shall be undertaken unless authorized by the Commission through a specific written document called a “work authorization”. Exhibit B of this RFQ is a sample of work authorization.

The Contract Manager will prepare and issue the written work authorizations and may set a maximum price, budget, and schedule for the work to be performed.

The Contract Manager will work, in consultation with the Contractor, to assign work to either the Contractor or a subcontractor. The following will be considered when determining work assignments:

- Expertise required for the work.
- Avoiding potential conflicts of interest
- Availability
- Ability to reach mutually acceptable cost for work needed.
- Request of the local government, school, or other agency to use a specific subcontractor based on previous work, location, etc.

Deliverables and Due Dates

All work assignments will be made through specific work authorizations and will specify the schedule of deliverables. The Contractor will prepare and submit the following to the Contract Manager:

Monthly Progress Report. The Contractor shall prepare a monthly progress report that summarizes all activities conducted by the Contractor and team. This includes a summary of contract expenditures to date. The monthly progress report is due to the Contract Manager within 15 working days after the end of the month. The Contract Manager will specify the report format and the number of copies to be submitted. All monthly progress reports will coincide with the invoice period.

Invoice. The Contractor will prepare a monthly invoice for all contract expenses performed for assigned work authorizations. An advance copy of the invoice shall be sent to the Contract Manager to insure that

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all records are included and the invoice is for authorized work. The official invoice is to be submitted to the Commission's Accounting Office. The Contract Manager will specify the invoice format.

Feasibility Studies/Energy Audits/Other Deliverables. The Contract Manager will specify the number of required copies. Hardcopy and/or electronic copy on CD/disk may be requested. These copies are due to the Contract Manager according to the work authorization schedule. Draft reports are typically due approximately six weeks after the initial site visit and final reports are due approximately two weeks after the draft reports as specified in the work authorization.

Special Projects. Deliverables due according to the work authorization schedule.

Program Meetings and Briefings. At the request of the Contract Manager, the Contractor and subcontractors shall be available for meetings or provide written and/or verbal program briefings to the Commission's staff or others. The cost of meetings with public agencies will be included in each work authorization. The cost of meetings requested specifically by the Contractor will be borne solely by the Contractor. The Commission expects to hold no more than one (1) program briefing meeting per quarter.

Draft and Final Contract Report and Abstract. A draft Final Report is due three months prior to the end of the contract. The Final Report is due no later than fifteen days prior to the end of the contract. The Final Report shall include an analysis of:

- The work accomplishments of the Contract.
- The effectiveness of the Contract in meeting the objectives of the program
- Future activities recommended to increase the effectiveness of the program and this contract

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Budget Detail and Payment Provision

The following clauses may or may not be included, the Commission will revise as necessary when developing this Exhibit for the Agreement.

1. **INVOICING PROCEDURES:** For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.

Invoices shall include the Agreement Number and shall be submitted in duplicate not more frequently than monthly in arrears to:

California Energy Commission
Accounting Office, MS-2
1516 9th Street, First Floor
Sacramento, California 95814

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

3. **TRAVEL AND PER DIEM RATES:** Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to nonrepresented state employees. Contractor may obtain current rates from the Commission Contract Officer. Travel expenses in excess of the state rates cannot be reimbursed.

4. **RETENTION:** The State shall retain from each invoice an amount equal to 10% of that invoice. The retained amount shall be held by the Commission and released to Contractor only upon the Commission's approval that the Contractor has satisfactorily completed all of the required services and the Final Report (if required) has been received and accepted.

If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task.

Contractor shall invoice the State for retention withheld by the Commission.

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5. **PAYMENT TERMS:**

- ☐ *Monthly Flat Rate* ☐ *Quarterly Flat Rate* ☐ *One –Time Payment*
☐ *Itemized Monthly or Quarterly Invoice*
☐ *Advance Payment Not to Exceed \$_____ or _____% of Contract Amount*
☐ *Reimbursement/Revenue*
☐ *Other (Explain) (i.e. lump sum/deliverable)*

6. **CONDITIONS:**

- A. No payment shall be made in advance of services rendered.
- B. A request for payment must include an invoice with cost backup, such as, travel receipts (where appropriate) receipts for equipment or supplies, copies of subcontractor's invoice, deliverables as required by the Agreement, and written progress reports.
- C. Invoices shall identify charges by tasks, personnel, labor rates and hours, and expenses authorized by either this Agreement or subsequent Work Authorizations.
- D. Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. Contractor will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the State disputes the submitted invoice.
- E. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927.
- F. Final invoice must be received by the Commission no later than 60 calendar days after the Agreement termination date.
- G. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.

7. **BUDGET DETAIL**

The Commission will insert the budget detail during the development of the Agreement.

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GENERAL TERMS AND CONDITIONS

PLEASE NOTE: The General Terms and Conditions will be included in the Agreement by reference to internet site: www.dgs.ca.gov/contracts, choose **Standard Language for Use in Standard Agreements** or if this Agreement is with another State agency, choose **Interagency Agreement**. The exact terms to be used will be those appearing on the website the date the Agreement is signed by Contractor.

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Special Terms and Conditions

1. **CONTRACT MANAGEMENT:**

- A. Contractor may change Project Manager but the Commission reserves the right to approve any substitution of the Project Manager.
- B. The Commission may change the Contract Manager by notice given Contractor at any time signed by the Contract Officer.
- C. Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Commission Contract Manager. In this connection, Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Commission personnel for the performance of services, which are the responsibility of Contractor unless the Commission Contract Manager previously agrees to such utilization in writing, and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing, coordinating or monitoring functions.

2. **STANDARD OF PERFORMANCE:** Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Commission Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply: Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the Commission Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission.
- B. The Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Commission directs the Contractor not to reperform a task; the Commission Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

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3. **SUBCONTRACTS:** Contractor shall enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of, the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Commission staff, and submitting completed products to the Commission Contract Manager.
- C. All subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C); 2) further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the Commission Contract Manager; and the confidentiality provisions in the Reports paragraph of this Agreement.
- D. Additions, Removal or Substitutions of Subcontractors

The Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Commission or Contractor requires the replacement or addition of subcontractor(s), the subcontractor(s) shall be selected using 1). A competitive bid process conducted in conformance with the State's and the Commission's procedures for competitive bids. For example, awards shall be made to the lowest bidder meeting the requirements of the bid document and obtaining a minimum of three bids. Contractor's competitive bid process shall be approved by the Commission Contract Manager and Contract Officer prior to release of the bid document. 2). The Commission may direct Contractor to sole source a subcontract with a specific firm, once the Commission Contract Manager has obtained sole source approval via Commission internal procedures. The Commission Contract Manager shall provide justification for the sole source subcontract to the Contracts Officer using the "Subcontractor Add" memo described below.
- 2) The Commission Contract manager shall complete and submit to the Commission Contract Officer a "Subcontractor Add" memo. This memo identifies the new

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subcontractor and what bidding method was used to obtain subcontractors (competitive or sole source).

- 3) Contractor shall submit any proposed subcontracts not originally identified in Contractor's proposal, or any substitution of subcontracts to the Commission for its approval prior to Contractor entering into it. Upon the termination of any subcontract, the Commission Contract Manager shall be notified immediately.

4. **PERFORMANCE EVALUATION:**

Consistent with Public Contract Code Sections 10367 and 10369, the Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Commission and the DGS defending his or her performance. The Contractor's statement shall be filed with the evaluation in the Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.

5. **REPORTS:**

- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepared a comprehensive Final Report, on a schedule as provided in Exhibit A.
- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:
California Energy Commission
Project Title
Contractor Number
By (Contractor)
- C. **Ownership:** Each report shall become the property of the Commission.
- D. **Non-Disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Commission Contract Manager, except as provided in F, below. Permission to disclose information on one occasion or public hearings held by the Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Contract, or at public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Commission or any other party, based on information received from the Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- E. **Confidentiality**
No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees

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or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the Contract Manager, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager or Contract Officer.

Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.

- F. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

"LEGAL NOTICE"

"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."

6. **CONTRACT DATA, OWNERSHIP RIGHTS:**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Commission and shall belong to the Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.

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- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at the Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Commission of the Final Report herein.
- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Commission of any contemplated action and the Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Commission so elects, the expense of further preserving data shall be paid for by the Commission. Contractor agrees that the Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

6. **RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART**

The Contractor, by signing this Contract, expressly grants to the Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Contract a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

Contractor, by signing this Contract, expressly conveys to the Commission all ownership of the physical works of art and fine art produced under this Contract. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Contract.

Contractor shall obtain these same rights for the Commission from all subcontractors and others who produce copyrightable material, works of art, or works of fine art under this Contract. Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Commission from the subcontractor.

- 7. **PUBLIC HEARINGS:** If public hearings on the scope of work are held during the period of the Contract, Contractor will make available to testify the personnel assigned to this Agreement. The Commission will reimburse Contractor for compensation and travel of the personnel at the Contract rates for the testimony which the Commission requests.

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8. **DISPUTES:** In the event of a Contract dispute or grievance between Contractor and the Commission, both parties shall follow the following two-step procedure. Contractor shall continue with the responsibilities under this contract during any dispute.

A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Commission Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Commission Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer decision, the Contractor may appeal to the second level.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Commission of the decision at a Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

B. Binding Arbitration

Should the Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

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The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

9. **TERMINATION:**

The parties agree that because the Commission is a state entity and contracts on behalf of all Californian rate payers, it is necessary for the Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Commission under the terms set forth below is an essential term of the Agreement, without which the Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Commission, the Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Commission.

This Agreement may be terminated for any reason set forth below.

A. **With Cause**

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Commission; or

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- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

10. **WAIVER:** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Commission to thereafter enforce each and every such provision.
11. **CAPTIONS:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.
12. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE:** In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.
13. **NOTICE:** Notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified on page one of this Agreement. Delivery by fax or e-mail is not considered notice for the purpose of this Agreement.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.

14. **STOP WORK:** The Commission Contract Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.
 - A. **Compliance:** Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.

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- B. **Equitable Adjustment:** An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. **Revoking a Stop Work Order:** Contractor shall resume the stopped work only upon receipt of written instructions from the Commission Contract Officer canceling the stop work order.

16. INTERPRETATION OF TERMS

Any inconsistency between the terms of any exhibits shall be resolved in favor of Exhibit A (Scope of Work) and Exhibit E (Additional Provisions).

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Additional Provisions

The following clauses may or may not be included in agreement, Contracts Officer to decide when developing this Exhibit if any of the following clauses apply to the specific scope of work or if an additional clause or term is needed.

1. **CONFIDENTIALITY:**

A. Information Considered Confidential

All contractor information considered confidential at the commencement of this Agreement is designated in the attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, the Parties have identified in the attachment to this exhibit, specific confidential information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the confidential information and presented in a sealed package to the Commission Contracts Officer. (Non-confidential deliverables are submitted to the Contract Manager.) All confidential information will be contained in the "confidential" volume, no confidential information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of confidential information specified in 20 CCR 2505. The Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the attachment to this exhibit.

D. Disclosure of Confidential Information

Disclosure of confidential information by the Commission may be made only pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

2. **PROPOSAL INTERPRETATION:** This project shall be conducted in accordance with the terms and conditions of Commission Request for Proposal, Invitation for Bid or Request for Qualifications number _____, titled _____, Contractor's proposal dated _____ and this Agreement. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal, this Agreement shall be considered controlling.

3. **WORK AUTHORIZATION PROCESS:** The Commission Contract Manager shall prepare a Work Authorization.(WA) directing the work the Contractor provides. All WA shall be in writing,

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numbered sequentially and approved by the Contractor's Project Manager and Commission's Contract Manager before beginning work. The Commission Contract Manager shall file all signed WA with the Commission Contracts Office. Each WA shall detail the following:

1. Detailed scope of work and what task the WA falls within related to this Agreement, objective or goals, the technology area and identification of the Contract/subcontractor team.
 2. All significant materials to be developed or services delivered. Identification of any materials to be furnished by the Commission to the Contractor. The due dates for materials or services performed under the WA. The time period for entire WA. Estimated budget including person hours, hourly rates, travel expenses, and total cost of the WA.
- A. The Commission reserves the right to require the Contractor to stop or suspend work on any WA. The Commission Contract Manager shall provide in writing to the Contractor's Project Manager notice of the date work is halted or suspended. Costs incurred to that date shall be reimbursed in accordance with the termination clause.
- B. The actual costs of a completed WA shall not exceed the authorized amount, except under the following condition:
- If, in the performance of the work, the Contractor determines that the actual costs will exceed the estimated costs, Contractor shall immediately notify the Commission Contract Manager. Upon such notification, the Commission Contract Manager may:
- 1) Alter the scope of the WA to accomplish the work within the estimated costs; or
 - 2) Augment the dollar amount of the WA via an amendment; or
 - 3) Authorize the Contractor to complete the work for the actual costs; or
 - 4) Terminate the WA.
- C. Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent contract, other than as provided pursuant to this Agreement, nor in any way amends or supersedes any of the other provisions of this Agreement.

4. **CONFLICT OF INTEREST:**

- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall report its findings in its progress report.
- B. Contractor shall submit a completed Fair Political Practices Commission Form 700, "Statement of Economic Interests" for each consultant as directed by the Commission's Contract Manager in consultation with the Commission's Chief Counsel's Office to file a statement.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. This does not

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apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than 10 percent of the total monetary value of the consulting services contract.

D. Bidding Activities:

- 1) Contractor and each subcontractor shall agree not to bid as an independent consultant on any of the following:
 - a) An RFP or project on which Contractor or any subcontractor has provided assistance under this Contract.
 - b) Every related RFP or subject that currently receives assistance or receives assistance during this Contract under _____ *[fill in program]* or intends to apply for such assistance under any of the above programs and makes that fact known to Contractor or Contractor team members.

2) Reviewing, Evaluation & Assistance Activities

Contractor and each team member shall be disqualified from participating in the review, evaluation, or assistance of:

- a) Any project seeking assistance under the programs listed above for which Contractor has become an independent consultant in a situation not covered by clause D.1; or,
- b) Any project for which, within twelve (12) months prior to the start date of this Contract or at any time during this Contract, it has provided assistance under a separate contract to the project proponent that is seeking assistance for the same project under any of the above programs.

3) Subcontractors

Contractor shall require each of its subcontractors at any level who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by the Commission Contract Manager, and shall furnish the Commission with evidence thereof. The terms of this paragraph shall remain in effect for the duration of this Contract.

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1. INTELLECTUAL PROPERTY

Refer to Exhibit E, "APPENDIX B, Intellectual Property Provisions – Assistance"

2. MULTI-YEAR FUNDING LANGUAGE

Funding for this Agreement comes from two fiscal years. Funding shall be subject to the appropriation and availability for that purpose on the 2003/04 Governor's Budget. In the event funds are not so available, the Commission shall have no further liability with regard to this Agreement.

The Commission reserves the right to reduce the amount of the funding to an amount deemed appropriate in the event the 2004/05 budget does not provide full funding of Commission Agreements. In this event, the Contractor and the Commission Contract Manager shall meet and reach agreement on a reduced Scope of Work commensurate with the level of available funding.

3. PVEA SEP FUNDING LANGUAGE

It is understood and agreed upon by the parties to this Contract that partial funding for this Contract is dependent upon a federal oil overcharge fund agreement that is scheduled to terminate June 30, 2004, and the following provisions apply:

- A. Funding for this Contract is subject to the approval of the United States Department of Energy and to any additional restrictions, limitations, or conditions imposed by the United States Department of Energy, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Contract.
- B. The Commission has the option to void the Contract under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.
- C. The Commission will apply for an extension of funding April 30, 2004, to begin July 1, 2004, and each subsequent year thereafter.

4. GRANTS REQUIREMENTS

The Office of Management and Budget (OMB) Circulars and /or federal regulations below are incorporated as part of this agreement. These terms and Conditions and any Special Conditions take precedence over the circulars and/or regulations checked below. OMB Circulars may be accessed on the OMB web site at www.whitehouse.gov/omb/circulars/index.html or by calling the Office of Administration, Publications Office, at (202) 395-7332.

- ☐ Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- ☐ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- ☒ Title 10 Code of Regulations (CFR) Part 600: DOE Financial Assistance Regulations (www.pr.doe.gov/f600toc.html)

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- ☐ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- ☐ OMB Circular A-21: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education (public and private colleges and universities)
- ☐ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- ☐ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- ☒ Title 48 CFR, Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)
(www.access.gpo.gov/nara/cfr/cfr-table-search.html)
- ☐ Other: _____
- ☐ None

5. RIGHTS OF PARTIES

Patent rights, rights in technical data, copyrights, and rights to invention shall follow the federal requirements. The Commission claims no additional ownership in such rights. However:

- A. The Commission shall be granted a no-cost, nonexclusive, nontransfereable, irrevocable license to use or have practiced for or on behalf of the State of California the subject invention(s) for governmental purposes. Recipient must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions,
- B. The Commission shall be granted the no-cost use of the technical data first produced or specifically used in the performance of this grant,
- C. The Commission shall be granted a royalty-free nonexclusive, irrevocable, nontransferable license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced in the performance of this grant.

6. AGREEMENT ON BUY AMERICAN ACT REQUIREMENTS

- A. The Contractor agrees to comply with sections 2 through 4 of the Act of March 3, 1993 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act"). The Contractor should review the provisions of the Act to ensure that expenditures made under this agreement are in accordance with it.
- B. It is the sense of the Congress of the United States that only American-made equipment and products should be purchased with financial assistance provided under this agreement.

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7. SITE VISITS

The California Energy Commission, the DOE, and/or their designees may make visits to the Contractor's project site, suppliers, subcontractors, and/or demonstration sites as frequently as necessary to:

- A. Review project accomplishments and management control systems, and
- B. Provide such technical assistance, as may be required.

"LEGAL NOTICE"

"This document was prepared as a result of work sponsored by the California Energy Commission through a federal grant agreement (grant number) with U.S. Department of Energy. It does not necessarily represent the views of the Federal Government, the Energy Commission, its employees, or the State of California. The Federal Government, the Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights."

8. NON-DISCRIMINATION CLAUSE

If this (Award) Contract is funded in part through federal financial assistance, Contractor and its subcontractors shall comply with Title VI of the Civil Rights Act of 1964 (42 United States Codes Section 2000d, et seq.) and Title IX of the Education Amendments of 1972 (20 United States Code Section 1681, et seq.) and shall not unlawfully discriminate against any beneficiary under this Contract because of race, color, national origin, or sex. For purposes of complying with this provision the term "beneficiary" refers to any person or entity in the United States that is intended to benefit directly or indirectly from the performance of this Contract. Contractor and its subcontractors shall inform beneficiaries of their rights under Title VI and Title IX by posting a copy of the Department of Energy's Nondiscrimination Poster, or its equivalent, in their places of business and by referring questions concerning a beneficiary's rights to the Commission's Equal Employment Opportunity Officer.

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**Intellectual Property Provisions
Non Research and Development
Large and Small Business and Others
*DE-FG51-03R021438***

01. FAR 52.227-1 Authorization and Consent (JUL 1995)
02. FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
This clause is not applicable if the award is for less than \$100,000.
03. FAR 52.227-3 Patent Indemnity (APR 1984)
04. FAR 52.227-14 Rights in Data - General, as modified by DEAR 927.409 (Effective Apr 1998)
05. FAR 52.227-16 Additional Data Requirements (JUN 1987)
06. FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)
07. DEAR 952.227-9 Refund of Royalties (MAR 1995)

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01. FAR 52.227-1 Authorization and Consent (Jul 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

02. FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Aug 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

03. FAR 52.227-3 Patent Indemnity (Apr 1984), Alternate III (JUL 1995)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such

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opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(c) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this contract and covering those communications services and facilities (1) that are or have been sold or offered for sale by the Contractor to the public, (2) that can be provided over commercially available equipment, or (3) that involve relatively minor modifications.

04. FAR 52.227-14 Rights in Data - General, as modified by DEAR 927.409 (Jun 1987)(Effective Apr 1998), Alternate II (Jun 1987), and Alternate III (Jun 1987)

(a) Definitions.

(1) *Computer data bases*, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) *Computer software*, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer databases.

(3) *Data*, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) *Form, fit, and function data*, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

(5) *Limited rights data*, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.

(6) *Restricted computer software*, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.

(7) *Technical data*, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer database.

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(8) *Unlimited rights*, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in:

- (i) Data first produced in the performance of this contract;
- (ii) Form, fit, and function data delivered under this contract;
- (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair items, components, or processes delivered or furnished for use under this contract; and
- (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) below.

(2) The Contractor shall have the right to:

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) below;
- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) below;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) Copyright.

(1) Data first produced in the performance of this contract. Unless provided otherwise in subparagraph (d) below, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 and 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in

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subparagraph (g)(3) below if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided below in this paragraph or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(3) The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraphs (g)(2) or (g)(3) below and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will not longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (i) above, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the Head of the Contracting Activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

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(2) The time limits in the procedures set forth in subparagraph (1) above may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) below, or the copyright notice required by paragraph (c) above, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor:

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the use of the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) above are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this Contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer database for delivery to the Government is to be treated as limited rights data and not restricted computer software.

(2) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE (JUN 1987)

(a) These data are submitted with limited rights under Government contract No. _____ (and subcontract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for

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purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

-[Agencies may list additional purposes as set forth in 27.404(d)(1) or if none, so state]

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(3) (i) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE (JUN 1987)

(a) This computer software is submitted with restricted rights under Government Contract No. (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any others rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE SHORT FORM (JUN 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No.

(and subcontract _____, if appropriate) with _____ (name of Contractor and subcontractor)."

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor

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includes the following statement with such copyright notice: "Unpublished-rights reserved under the Copyright Laws of the United States."

(h) Subcontracting.

The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) Relationship to patents.

Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) above, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

05. FAR 52.227-16 Additional Data Requirements (Jun 1987)

(a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data-General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data-General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data-General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

06. FAR 52.227-23 Rights to Proposal Data (Jun 1987)

Except for data contained on pages NONE, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated See NFAA Of This Agreement, upon which this contract is based.

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07. DEAR 952.227-9 Refund of Royalties (Mar 1995)

- (a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.
- (b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.
- (c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.
- (d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- (e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.
- (f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

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NAMES AND ADDRESSES OF AGREEMENT REPRESENTATIVES

Commission Contract Manager: NAME, MS-?? California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916)??-???? Fax: (916)??-???? e-mail: ???@energy.state.ca.us	Contractor Project Manager: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Commission Contract Officer: Peg Pigeon, MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654-7093 Fax: (916) 654-4423 e-mail: ppigeon@energy.state.ca.us Deliver confidential deliverables to this location only.	Contractor Contract Officer: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Invoices, Progress Reports and Non-Confidential Deliverables to: Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4401 Fax: 916-653-1435 e-mail: awilliams@energy.state.ca.us	
Legal Notices: Cheryl Raedel, MS-18 Manager, Contracts Office California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4392 Fax: 916-654-4423 e-mail: craedel@energy.state.ca.us	(contractor legal person)

ATTACHMENT 5C

STANDARD AGREEMENT

STD. 213 (NEW 02/98)

AGREEMENT NUMBER

400-03-XXX

1. This Agreement is entered into between the State Agency and the Contractor named below
STATE AGENCY'S NAME
State Energy Resources Conservation and Development Commission
CONTRACTOR'S NAME
2. The term of this Agreement is: to be completed by Commission
3. The maximum amount of this Agreement is: \$ to be completed by Commission
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement. These terms apply to State and Consumer Services Agency (SCSA) funded work.

Exhibit A – Scope of Work

Page(s)

Exhibit B – Budget Detail and Payment

Page(s)

* Exhibit C – General Terms and Conditions

GTC-103

Number

(Dated)

Exhibit D – Special Terms and Conditions

Page(s)

Exhibit E – Additional Provisions

Page(s)

Exhibit F – Contact Persons

Page

*View at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

**CALIFORNIA
Department of General
Services
Use Only**

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

State Energy Resources Conservation and Development Commission

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Cheryl Raedel, Contracts Office Manager

ADDRESS

1516 9th Street, Sacramento, CA 95814

☐ Exempt per

ATTACHMENT 5C

SCOPE OF WORK

PURPOSE

Contractor agrees to provide to the State Energy Resources Conservation and Development Commission (Commission) the services as described herein:

Primary Tasks

The seven major categories of work are divided into seven tasks:

Tasks	Description of Task
1	Evaluate Energy Efficiency Opportunities in Existing Buildings
2	Support for New Construction Projects
3	Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage
4	Evaluate Energy Efficiency Opportunities in Water and Wastewater Treatment Facilities
5	Engineering Support
6	Program and Energy Efficiency Marketing
7	Administrative Support Services to Contract. (Contractor Only.)

Contractor may be asked to perform the following tasks, as directed by the Contract Manager, in a Work Authorization.

Task 1 – Evaluate Energy Efficiency Opportunities in Existing Buildings

Contractor will conduct facility energy audits and prepare technical reports identifying energy efficiency opportunities in public buildings or facilities as assigned. At each facility energy audit, a California registered professional engineer must be on site and sign off on the validity of the report recommendations. The energy audits may be comprehensive or technology specific at the direction of the Contract Manager. A comprehensive study includes a detailed analysis of all energy efficiency opportunities within the facility. A study may also be authorized for a single purpose project, focusing on a particular technology (e.g. lighting only). For comprehensive energy audits, the Commission may ask that the energy audit analysis and technical report be prepared according to the Commission's Feasibility Study Guidelines. (P400-00-002)

Typical project areas to be considered in an energy audit include, but are not limited to the following:

- ? Lighting
 - Incandescent, fluorescent, HID lighting conversions, and LED exit signs
 - Traffic and Street lights
 - Occupancy sensors (ultrasonic or passive infrared)

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- ? Heating, Ventilating and Air Conditioning (HVAC)
 - Upgrade natural gas fired boilers
 - Efficient cooling towers
 - Primary/secondary pumping
 - Heat recovery
 - Evaporative cooling
 - Variable speed, two speed and high efficiency motors
 - Packaged air conditioner or chiller replacement.
- ? Controls
 - Energy management systems
 - Modifications of existing controls and system operations
 - Dual duct conversions
 - Outside air economizer operations and modifications

Contractor will assist public agencies in the contract process, including preparing performance specifications. Upon completion of the energy audit and technical reports, the Contractor may be directed to develop performance specifications and provide other services as needed to assist a public agency in the construction of projects recommended in the audit. The Contract Manager will determine whether this work shall be included in the work authorization.

Task 2 –Support for New Construction Projects

Contractor will conduct reviews of new public facility designs, including developing and/or evaluating building computer simulations, and recommending cost effective design alternatives to increase building energy efficiency. Assist public agencies to exceed Title 24 Building Energy Standards. New Construction assistance goal is to provide support to exceed Title 24 Standards for energy savings by at least 10%.

The Contractor will be directed by the Contract Manager to advise the public agency and /or the agency's architect and mechanical engineers on energy efficient design alternatives including developing life-cycle cost comparisons of alternatives. This may include but is not limited to:

- ? Review and make recommendations on lighting systems, daylighting opportunities or design layouts.
- ? Review and make recommendations on building orientation, envelope features including energy optimized insulation and fenestration.
- ? Review and make recommendations on HVAC systems and energy management controls including identification of load shifting opportunities.
- ? Develop baseline and proposed building simulation models.
- ? Estimate incremental cost for alternatives and developing cost benefit analysis.

Contractor will evaluate and analyze the technical and economic feasibility of using energy and resource efficient building materials on a public facilities. Energy and resource efficient building materials include use of recycled materials, those with low embodied energy and those that can reduce waste generation at the construction/demolition site. The Contractor may be asked to evaluate the costs and benefits of the recommendations using life cycle cost analysis or other methods, as determined by the Contract Manager.

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Task 3 – Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage

Contractor will evaluate the technical and economic feasibility of installing a cogeneration, distributive generation, renewable energy system (including landfill gas, photovoltaics, biomass, wind and fuel cells) and/or thermal energy storage system for public facility(ies). Depending on the nature of the project, the Contract Manager may require that a California registered professional engineer be on-site during data collection and approve the final study or report. The Contractor may be asked to evaluate project cost effectiveness using Commission financing. The Commission may ask that the feasibility study be prepared according to the Commission's *Guide to Preparing Feasibility Studies for Energy Efficiency Projects* (P400-00-002).

Task 4 – Evaluate Energy Efficiency Opportunities in Water and Wastewater Treatment Facilities.

Contractor will evaluate energy efficiency opportunities including on-site energy generation in water and wastewater treatment facilities. Depending on the nature of the project, the Contract Manager may require that a California registered professional engineer be on-site during data collection and approve the final study or report. The Contractor may be asked to evaluate project cost effectiveness using Commission financing. The report will either be comprehensive or technology specific.

Typical project areas to be considered in the report include, but are not limited to, the following:

- Lighting improvements
- Heating, ventilating and air conditioning (HVAC) modifications and/or replacements
- Energy efficient motor and pump replacements, including variable speed drives
- Electrical load management systems and strategies
- Cogeneration optimization (wastewater only)
- Fuel cell analysis (wastewater only)

Once the report is completed, the Contractor may be directed to assist the customer in implementing energy projects by providing services to support the bid process.

Task 5 –Engineering Support Services

The Contractor may be assigned to provide engineering support for special projects. Examples include, but are not limited to:

- Evaluation of Energy Services Proposals: Perform independent review of energy project proposals submitted to public agencies. The Contractor may be assigned to review existing energy project proposals, designs, and other special projects on a case-by-case basis, as directed by the Contract Manager. In particular, the Commission is frequently asked to assist local agencies to procure services from Energy Service Company's or to provide an independent third-party review of an existing Energy Service Company proposal.
- Commissioning: Recommend building and/or equipment Commissioning procedures and assist in oversight inspection and Commissioning of installed energy efficiency or energy related projects. Commissioning services could include:
 - Help in developing a Commissioning plan for a specific building; or

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- Reviewing and commenting on the adequacy of the commissioning protocols proposed by a design team for an entire building or energy system.
- Monitoring and Verification: Perform independent monitoring and verification of energy project installations to compare “actual” energy savings with those identified in the energy study or report. The Contractor may be asked to provide project troubleshooting using commissions and/or monitoring and verification tools.
- Utility Rate Analysis: Review current utility rates and determine whether the public agency could benefit by changing rates based on the recommended projects. The Contractor may also be assigned to review the current rates and evaluate the impacts of pending California Public Utility Commission (CPUC) rulemaking, especially for power generation projects (e.g. cogeneration, landfill gas). Also the Contractor may be assigned to evaluate the impact of current/ planned Demand Side Management, Demand Responsive, distributed generation incentives and their impact on project feasibility.

Task 6 – Program and Energy Efficiency Marketing

Contractor will provide program and energy efficiency marketing assistance. Contractor will assist in the development of marketing materials that may include case studies, energy efficiency program brochures and applications.

Task 7 – Administrative Support Services to Contract. (Contractor only.)

The Contractor will perform the following as required for the work performed by subcontractors during the contract period:

- ? At the direction of the Contract Manager, issue Commission prepared work authorizations which define the scope of work, the schedule of deliverables and the project budget for work to be done by subcontractors;
- ? Prepare and issue contract agreements with subcontractors that convey all provisions contained in the contract between the Commission and the Contractor for the review and approval of the Contract Manager;
- ? When directed by the Contract Manager, hire, through a competitive process, vendors or additional subcontractors to obtain needed products and services;
- ? When new subcontractors are hired or added, the Contractor shall submit proposed subcontractor contracts to the Commission for review and approval. At the same time, the Contractor shall provide the Commission with updated Disabled Veteran Owned Business Enterprise (DVBE) forms. The Contractor is responsible for the quality of all subcontractor work and the Commission will assign all work to the Contractor.
- ? Enforce subcontractor contract provisions, and in the event of failure of the subcontractor to satisfactorily perform services, recommend resolution to resolve the problem;
- ? Respond in a timely fashion to information requests or direction from the Contract Manager;
- ? Coordinate availability of subcontractors to meet needs of Commission staff;
- ? Require subcontractors, via a contract, to provide invoices which correctly identify personnel, actual hourly rates and direct expenses charged to each work authorization and provide back-up documentation for expenses;
- ? Pay subcontractors promptly, within 5 working days, upon receipt of payment from the Commission;
- ? Complete a payment authorization form for each subcontractor invoice for which deliverables have been received and approved;

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- ? Maintain a current contract spreadsheet capable of tracking subcontractor and Contractor work activity, subcontractor and Contractor invoice activity, and the status of work authorizations;
- ? Provide monthly progress reports to the Contract Manager;
- ? Process subcontractor requests for release of retained funds;
- ? Provide administrative and/or technical support for the programs, as authorized by the Contract Manager through administrative work authorizations;
- ? Provide verbal or written briefings regarding contract activities to the Commission or other entities as authorized by the Contract Manager; and
- ? Provide a draft and final contract report and abstract. A draft Final Report is due three months before the end of the contract. The Final Report is due no later than fifteen days before the end of the contract. The Final Report shall include a summary of:
 - The effectiveness of this contract in meeting the objectives of the program
 - Summary of the work accomplishments of the Contractor and team
 - Future activities recommended increasing the effectiveness of the programs and this contract.

Work Authorizations

This is a “work authorization” contract and no work shall be undertaken unless authorized by the Commission through a specific written document called a “work authorization”. Exhibit B of this RFQ is a sample of work authorization.

The Contract Manager will prepare and issue the written work authorizations and may set a maximum price, budget, and schedule for the work to be performed.

The Contract Manager will work, in consultation with the Contractor, to assign work to either the Contractor or a subcontractor. The following will be considered when determining work assignments:

- Expertise required for the work.
- Avoiding potential conflicts of interest
- Availability
- Ability to reach mutually acceptable cost for work needed.
- Request of the local government, school, or other agency to use a specific subcontractor based on previous work, location, etc.

Deliverables and Due Dates

All work assignments will be made through specific work authorizations and will specify the schedule of deliverables. The Contractor will prepare and submit the following to the Contract Manager:

Monthly Progress Report. The Contractor shall prepare a monthly progress report that summarizes all activities conducted by the Contractor and team. This includes a summary of contract expenditures to date. The monthly progress report is due to the Contract Manager within 15 working days after the end of the month. The Contract Manager will specify the report format and the number of copies to be submitted. All monthly progress reports will coincide with the invoice period.

Invoice. The Contractor will prepare a monthly invoice for all contract expenses performed for assigned work authorizations. An advance copy of the invoice shall be sent to the Contract Manager to insure that

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all records are included and the invoice is for authorized work. The official invoice is to be submitted to the Commission's Accounting Office. The Contract Manager will specify the invoice format.

Feasibility Studies/Energy Audits/Other Deliverables. The Contract Manager will specify the number of required copies. Hardcopy and/or electronic copy on CD/disk may be requested. These copies are due to the Contract Manager according to the work authorization schedule. Draft reports are typically due approximately six weeks after the initial site visit and final reports are due approximately two weeks after the draft reports as specified in the work authorization.

Special Projects. Deliverables due according to the work authorization schedule.

Program Meetings and Briefings. At the request of the Contract Manager, the Contractor and subcontractors shall be available for meetings or provide written and/or verbal program briefings to the Commission's staff or others. The cost of meetings with public agencies will be included in each work authorization. The cost of meetings requested specifically by the Contractor will be borne solely by the Contractor. The Commission expects to hold no more than one (1) program briefing meeting per quarter.

Draft and Final Contract Report and Abstract. A draft Final Report is due three months prior to the end of the contract. The Final Report is due no later than fifteen days prior to the end of the contract. The Final Report shall include an analysis of:

- The work accomplishments of the Contract.
- The effectiveness of the Contract in meeting the objectives of the program
- Future activities recommended to increase the effectiveness of the program and this contract

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Budget Detail and Payment Provision

The following clauses may or may not be included, the Commission will revise as necessary when developing this Exhibit for the Agreement.

1. **INVOICING PROCEDURES:** For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.

Invoices shall include the Agreement Number and shall be submitted in duplicate not more frequently than monthly in arrears to:

California Energy Commission
Accounting Office, MS-2
1516 9th Street, First Floor
Sacramento, California 95814

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

3. **TRAVEL AND PER DIEM RATES:** Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to nonrepresented state employees. Contractor may obtain current rates from the Commission Contract Officer. Travel expenses in excess of the state rates cannot be reimbursed.

4. **RETENTION:** The State shall retain from each invoice an amount equal to 10% of that invoice. The retained amount shall be held by the Commission and released to Contractor only upon the Commission's approval that the Contractor has satisfactorily completed all of the required services and the Final Report (if required) has been received and accepted.

If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task.

Contractor shall invoice the State for retention withheld by the Commission.

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5. **PAYMENT TERMS:**

- ☐ *Monthly Flat Rate* ☐ *Quarterly Flat Rate* ☐ *One –Time Payment*
☐ *Itemized Monthly or Quarterly Invoice*
☐ *Advance Payment Not to Exceed \$_____ or _____% of Contract Amount*
☐ *Reimbursement/Revenue*
☐ *Other (Explain) (i.e. lump sum/deliverable)*

6. **CONDITIONS:**

- A. No payment shall be made in advance of services rendered.
- B. A request for payment must include an invoice with cost backup, such as, travel receipts (where appropriate) receipts for equipment or supplies, copies of subcontractor's invoice, deliverables as required by the Agreement, and written progress reports.
- C. Invoices shall identify charges by tasks, personnel, labor rates and hours, and expenses authorized by either this Agreement or subsequent Work Authorizations.
- D. Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. Contractor will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the State disputes the submitted invoice.
- E. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927.
- F. Final invoice must be received by the Commission no later than 60 calendar days after the Agreement termination date.
- G. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.

7. **BUDGET DETAIL**

The Commission will insert the budget detail during the development of the Agreement.

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GENERAL TERMS AND CONDITIONS

PLEASE NOTE: The General Terms and Conditions will be included in the Agreement by reference to internet site: www.dgs.ca.gov/contracts, choose **Standard Language for Use in Standard Agreements** or if this Agreement is with another State agency, choose **Interagency Agreement**. The exact terms to be used will be those appearing on the website the date the Agreement is signed by Contractor.

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Special Terms and Conditions

1. **CONTRACT MANAGEMENT:**

- A. Contractor may change Project Manager but the Commission reserves the right to approve any substitution of the Project Manager.
- B. The Commission may change the Contract Manager by notice given Contractor at any time signed by the Contract Officer.
- C. Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Commission Contract Manager. In this connection, Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Commission personnel for the performance of services, which are the responsibility of Contractor unless the Commission Contract Manager previously agrees to such utilization in writing, and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing, coordinating or monitoring functions.

2. **STANDARD OF PERFORMANCE:** Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Commission Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply: Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the Commission Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission.
- B. The Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Commission directs the Contractor not to reperform a task; the Commission Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

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3. **SUBCONTRACTS:** Contractor shall enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

OR

No Subcontractors are named for this Agreement. If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and Contractor shall manage the performance of the subcontractors.

AND

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with, and the reimbursement of each of, the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Commission staff, and submitting completed products to the Commission Contract Manager.
- C. All subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C); 2) further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the Commission Contract Manager; the confidentiality provisions in the Reports paragraph of this Agreement, the Indemnification provision in Exhibit E, the Audit provision in Exhibit E, and the Insurance provision in Exhibit E.
- D. Additions, Removal or Substitutions of Subcontractors

The Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Commission or Contractor requires the replacement or addition of subcontractor(s), the subcontractor(s) shall be selected using 1). A competitive bid process conducted in conformance with the State's and the Commission's procedures for competitive bids. For example, awards shall be made to the lowest bidder meeting the requirements of the bid document and obtaining a minimum of three bids. Contractor's competitive bid process shall be approved by the Commission Contract Manager and Contract Officer prior to release of the bid document. 2). The Commission may direct Contractor to sole source a subcontract

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with a specific firm, once the Commission Contract Manager has obtained sole source approval via Commission internal procedures. The Commission Contract Manager shall provide justification for the sole source subcontract to the Contracts Officer using the "Subcontractor Add" memo described below.

- 2) The Commission Contract manager shall complete and submit to the Commission Contract Officer a "Subcontractor Add" memo. This memo identifies the new subcontractor and what bidding method was used to obtain subcontractors (competitive or sole source).
- 3) Contractor shall submit any proposed subcontracts not originally identified in Contractor's proposal, or any substitution of subcontracts to the Commission for its approval prior to Contractor entering into it. Upon the termination of any subcontract, the Commission Contract Manager shall be notified immediately.

4. **REPORTS:**

- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.

- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:

California Energy Commission
Project Title
Contractor Number
By (Contractor)

- C. **Ownership:** Each report shall become the property of the Commission.

- D. **Non-Disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Commission Contract Manager, except as provided in F, below. Permission to disclose information on one occasion or public hearings held by the Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Contract, or at public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Commission or any other party, based on information received from the Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.

- E. **Confidentiality**

No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the Contract

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Manager, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager or Contract Officer.

Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.

- F. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

"LEGAL NOTICE"

"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."

5. **CONTRACT DATA, OWNERSHIP RIGHTS:**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Commission and shall belong to the Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the

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Contractor in the performance of this Contract at the Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.

- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Commission of the Final Report herein.
- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Commission of any contemplated action and the Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Commission so elects, the expense of further preserving data shall be paid for by the Commission. Contractor agrees that the Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

6. **RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART**

The Contractor, by signing this Contract, expressly grants to the Commission, California State & Consumer Services Agency (SCSA), California Public Utilities Commission, [and other entities to be determined when contract is executed] for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Contract a royalty-free, paid-up, non-exclusive, irrevocable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

Contractor, by signing this Contract, expressly conveys to the Commission all ownership of the physical works of art and fine art produced under this Contract. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Contract.

Contractor shall obtain these same rights for the Commission from all subcontractors and others who produce copyrightable material, works of art, or works of fine art under this Contract. Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Commission from the subcontractor.

- 7. **PUBLIC HEARINGS:** If public hearings on the scope of work are held during the period of the Contract, Contractor will make available to testify the personnel assigned to this Agreement. The Commission will reimburse Contractor for compensation and travel of the personnel at the Contract rates for the testimony which the Commission requests.
- 8. **DISPUTES:** In the event of a Contract dispute or grievance between Contractor and the Commission, both parties shall follow the following two-step procedure. Contractor shall continue with the responsibilities under this contract during any dispute.

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A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Commission Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Commission Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer decision, the Contractor may appeal to the second level.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Commission of the decision at a Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

B. Binding Arbitration

Should the Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;

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- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

9. **TERMINATION:**

The parties agree that because the Commission is a state entity and contracts on behalf of all Californian rate payers, it is necessary for the Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Commission under the terms set forth below is an essential term of the Agreement, without which the Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Commission, the Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Commission.

This Agreement may be terminated for any reason set forth below.

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

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B. **Without Cause**

The Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. In such event, Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable.

10. **WAIVER:** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Commission to thereafter enforce each and every such provision.
11. **CAPTIONS:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.
12. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE:** In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.
13. **NOTICE:** Notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified on page one of this Agreement. Delivery by fax or e-mail is not considered notice for the purpose of this Agreement.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.

14. **STOP WORK:** The Commission Contract Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as delay in or elimination of the Commission's funding for this Agreement, a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.
- A. **Compliance:** Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. **Specific Work:** The stop work shall indicate the specific work pertaining to the stop work order:
- The stop work order may pertain to all ongoing work, and indicate that all work shall cease immediately
 - The stop work order may pertain only to specific tasks or specific school sites in the case of audits.

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- The stop work order may direct the Contractor to complete ongoing work on a specific task or school site, but not begin work on new schools.
- C. **Equitable Adjustment:** An equitable adjustment may be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- D. **Corrective Action:** The stop work order shall contain any corrective actions that can be taken by Contractor in order to resume work.
- E. **Revoking a Stop Work Order:** Contractor shall resume the stopped work only upon receipt of written instructions from the Commission Contract Officer canceling the stop work order.

16. INTERPRETATION OF TERMS

Any inconsistency between the terms of any exhibits shall be resolved in favor of Exhibit A (Scope of Work) and Exhibit E (Additional Provisions).

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Additional Provisions

The following clauses may or may not be included in agreement, Contracts Officer to decide when developing this Exhibit if any of the following clauses apply to the specific scope of work or if an additional clause or term is needed.

1. **CONFIDENTIALITY:**

A. Information Considered Confidential

All contractor information considered confidential at the commencement of this Agreement is designated in the attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, the Parties have identified in the attachment to this exhibit, specific confidential information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the confidential information and presented in a sealed package to the Commission Contracts Officer. (Non-confidential deliverables are submitted to the Contract Manager.) All confidential information will be contained in the "confidential" volume, no confidential information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of confidential information specified in 20 CCR 2505. The Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the attachment to this exhibit.

D. Disclosure of Confidential Information

Disclosure of confidential information by the Commission may be made only pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

2. **PROPOSAL INTERPRETATION:** This project shall be conducted in accordance with the terms and conditions of Commission Request for Proposal, Invitation for Bid or Request for Qualifications number _____, titled _____, Contractor's proposal dated _____ and this Agreement. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal, this Agreement shall be considered controlling.

3. **WORK AUTHORIZATION PROCESS:** The Commission Contract Manager shall prepare a Work Authorization.(WA) directing the work the Contractor provides. All WA shall be in writing,

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numbered sequentially and approved by the Contractor's Project Manager and Commission's Contract Manager before beginning work. The Commission Contract Manager shall file all signed WA with the Commission Contracts Office. Each WA shall detail the following:

1. Detailed scope of work and what task the WA falls within related to this Agreement, objective or goals, the technology area and identification of the Contract/subcontractor team.
 2. All significant materials to be developed or services delivered. Identification of any materials to be furnished by the Commission to the Contractor. The due dates for materials or services performed under the WA. The time period for entire WA. Estimated budget including person hours, hourly rates, travel expenses, and total cost of the WA.
- A. The Commission reserves the right to require the Contractor to stop or suspend work on any WA. The Commission Contract Manager shall provide in writing to the Contractor's Project Manager notice of the date work is halted or suspended. Costs incurred to that date shall be reimbursed in accordance with the termination clause.
- B. The actual costs of a completed WA shall not exceed the authorized amount, except under the following condition:
- If, in the performance of the work, the Contractor determines that the actual costs will exceed the estimated costs, Contractor shall immediately notify the Contract Manager. Upon such notification, the Contract Manager may:
- 1) Alter the scope of the WA to accomplish the work within the estimated costs; or
 - 2) Augment the dollar amount of the WA via an amendment; or
 - 3) Authorize the Contractor to complete the work for the actual costs; or
 - 4) Terminate the WA.
- C. Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent contract, other than as provided pursuant to this Agreement, nor in any way amends or supersedes any of the other provisions of this Agreement.

4. **CONFLICT OF INTEREST:**

- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall report its findings in its progress report.
- B. Contractor shall submit a completed Fair Political Practices Commission Form 700, "Statement of Economic Interests" for each consultant as directed by the Contract Manager in consultation with the Commission's Chief Counsel's Office to file a statement.

5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, the California Public Utilities Commission (CPUC), their officers, agents and employees and Pacific Gas & Electric Company (PG&E), its affiliates, subsidiaries, parent companies, officers, managers, directors, agents, and employees, from any and all claims and losses, including infringement of any intellectual property rights, including patent, copyright, trademark, trade secret and proprietary rights

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accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses, including infringement of any intellectual property rights accruing or resulting to any person, firm or corporation, including but not limited to employees of the State and Consumer Services Agency (SCSA), the CPUC and PG&E who may be injured or damaged by Contractor in connection with this Agreement. Contractor also agrees to include these requirements in all subcontracts.

6. **AUDIT:** Contractor agrees that the CPUC, or its designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Contractor also agrees to include these requirements in all subcontracts.

8. **INSURANCE REQUIREMENTS:**

- A. Contractor shall maintain the following insurance coverage:

Workers' Compensation and Employer's Liability:	Statutory/\$1,000,000
Commercial General Liability (per occurrence):	\$1,000,000 each occurrence/\$2,000,000 aggregate
Business Auto (per occurrence):	\$1,000,000

- B. Contractor shall furnish the Commission with certificates of insurance for all insurance required. SCSA, PG&E and the CPUC shall be certificate holders on the subject insurance policies. The certificate shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to SCSA, CPUC and PG&E. The certificate shall also state that, with respect to commercial general liability coverage, PG&E and the State of California, and their officers, agents, employees, and servants are included as additional insured, but only with respect to work performed for the State of California under the contract. The documentation must be signed by a person authorized by insurer to bind coverage on its behalf. Failure of contractors to maintain the required insurance shall be grounds for termination of this Agreement. Contractor also agrees to include these requirements in all subcontracts.

THE FOLLOWING SHALL BE INCLUDED IN CONTRACTS FOR WORK PERFORMED FOR THE BRIGHT SCHOOLS PROGRAM:

9. **SOURCE OF FUNDING:** Contractor shall disclose the source of funding on all final deliverables by stating prominently that "this portion of the Bright Schools Program is funded by California ratepayers under the auspices of the California Public Utilities commission through the State and Consumer Services Agency Schools Energy Efficiency Program."

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NAMES AND ADDRESSES OF AGREEMENT REPRESENTATIVES

Commission Contract Manager: NAME, MS-?? California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916)??-???? Fax: (916)??-???? e-mail: ???@energy.state.ca.us	Contractor Project Manager: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Commission Contract Officer: Peg Pigeon, MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654-7093 Fax: (916) 654-4423 e-mail: ppigeon@energy.state.ca.us Deliver confidential deliverables to this location only.	Contractor Contract Officer: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Invoices, Progress Reports and Non-Confidential Deliverables to: Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4401 Fax: 916-653-1435 e-mail: awilliams@energy.state.ca.us	
Legal Notices: Cheryl Raedel, MS-18 Manager, Contracts Office California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4392 Fax: 916-654-4423 e-mail: craedel@energy.state.ca.us	(contractor legal person)

BID NUMBER
AGENCY/DEPT.

This request form should be completed by bidders wishing to apply for TACPA preferences for this solicitation.

*See reverse for program
description and
instructions for completing
this form.*

SECTION 2: REQUEST FOR 5% WORKSITE PREFERENCE

SECTION 2: REQUEST FOR 5% WORKSITE PREFERENCE *List the bidding firm and all suppliers and subcontractors who will work with the bidder to fulfil the terms of the contract. Indicate those firms for which the bidder is requesting worksite preference eligibility by providing the requested information. Attach additional pages if needed.*

NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
TOTAL LABOR HOURS ESTIMATED					

SECTION 2: REQUEST FOR 1% - 4% WORKFORCE PREFERENCE

[illegible]

SECTION 3: REQUEST FOR 1% - 4% WORKFORCE PREFERENCE

- ☐ I request a 1% preference for hiring eligible persons to perform 5 - 9.99% of the total contract labor hours
- ☐ I request a 2% preference for hiring eligible persons to perform 10 - 14.99% of the total contract labor hours
- ☐ I request a 3% preference for hiring eligible persons to perform 15 - 19.99% of the total contract labor hours
- ☐ I request a 4% preference for hiring eligible persons to perform 20% or more of the total contract labor hours

SECTION 4: CERTIFICATION

I hereby certify under penalty of perjury, that (1) the bidder is a California based company as defined in the TACPA regulations, (2) at least 50% of the labor hours required to manufacture the goods and to perform a contract for goods, or 90% of the labor hours required to perform a contract for services shall be performed at the eligible distressed area worksite(s) claimed in Section 2, (3) if applying for workforce preference, the bidder shall hire persons with a high risk of unemployment to perform the required contract labor hours as requested in Section 3, and (4) all information provided in this request is true, correct, and complete. Any person falsely certifying, willfully providing false information, omitting information, or failing to comply with the TACPA statute is subject to penalties, fines and possible loss of State contracting eligibility.

BIDDER'S SIGNATURE		PRINTED OR TYPED NAME	
TITLE	AREA CODE & PHONE NUMBER		DATE EXECUTED

Program Description

The intent of the Target Area Contract Preference Act (TACPA) is to promote economic development and employment opportunities in distressed areas of the state by offering bidding preferences on qualified solicitations.

TACPA provides for two preferences: Worksite and Workforce.

Worksite Preference: Bidders may be eligible for a 5% bid preference on state goods and services contracts valued at more than \$100,000 if the worksite is located in a distressed area as designated by the State Office of Planning and Research.

TACPA allows state contracting officials to award the worksite preference when 50% of the labor hours required to manufacture the goods and to perform a contract for goods, or 90% of the labor hours required to perform a contract for services is performed at the approved worksites.

Workforce Preference: Companies qualifying for the 5% worksite preference may request an additional 1% - 4% workforce preference by certifying to hire a specified percent of their contract workforce from employees who are at high risk of unemployment as defined in California Government Code, Section 4532(f).

To request workforce preference, the bidder must first identify an eligible worksite.

TACPA bid preferences do not apply to contracts in which the worksite is fixed.

For more detail, see California Government Code, Section 4530 et seq. and California Code of Regulations, Title 2, Section 1896.30.

Other Bidding Preference Programs

- In addition to TACPA, the State has other bidding preference programs for which you might qualify:
- EZA - Enterprise Zone Act (up to a 9% bidding preference)
 - LAMBRA - Local Agency Military Base Recovery Area Act (up to a 9% bidding preference)
 - Small Business - Certified small businesses in California can receive a 5% bidding preference.

A non-certified small business that claims any combination of EZA, TACPA or LAMBRA preferences cannot use these preferences to displace a certified small business.

How the Bidding Preference Works

The TACPA bidding preference that you qualify for is used only for bid solicitation purposes, to a maximum of \$50,000. The preference does not alter the amount of the resulting contract.

If you qualify for more than one bidding preference (EZA, TACPA, LAMBRA, Small Business) the maximum preference allowed by law is 15% or \$100,000.

Reporting Requirements

Firms receiving TACPA preferences must report their labor hours. Reference the state contract on which you are bidding for specific reporting requirements.

How to Identify TACPA Locations

Contact the appropriate city or county planning and development office or your local Area Council of Governments and ask for the Census Tract and Block Group numbers for the firm or firms for which you are requesting worksite preference.

Then, contact the State of California, Department of General Services, Office of Small Business Certification and Resources at (916) 323-5478 and ask for the TACPA coordinator. The coordinator will tell you if the worksite is eligible.

Instructions for completing "Target Area Contact Preferences Act (TACPA) Request" on Reverse

- Section 1:** Enter the solicitation number and the name of the state department or agency offering the solicitation.
- Section 2:** Enter the requested information for 1) the bidding firm, and 2) all firms with whom the bidder will be subcontracting to perform the work required to complete this bid. You must list all firms, including the manufacturer, if applicable, not just those requesting worksite preference.

Firm's role in this bid: Enter the appropriate description indicating what job the listed firm will perform.

Tract and Block Numbers: See instructions above on how to obtain tract and block numbers.

Labor Hours Estimated: For each firm listed, estimate the total labor hours to be performed. Total the estimated hours for each firm and enter them into the box labeled "Total Labor Hours Estimated"

Criteria:

- A: The firm is located in a California eligible distressed area.
- B: The firm will establish a worksite in a California eligible distressed area.
- C: MAP REQUIRED. The firm is located in a census tract block that, when attached to an eligible distressed area, forms a contiguous boundary. If you enter "C", you must attach a map showing the relationship of the requested area to the distressed area.
- D: MAP REQUIRED. The firm will establish a worksite located in a census tract block that, when attached to an eligible distressed area, forms a contiguous boundary. If you enter "D", you must attach a map showing the relationship of the requested area to the distressed area.

- E: GOODS ONLY. The firm will purchase the contract goods from a manufacturer located in an eligible distressed area.
- F: GOODS ONLY/MAP REQUIRED. The firm will purchase contract goods from a manufacturer located in a census tract block that, when attached to a distressed area, forms a contiguous boundary. If you enter "F", you must attach map showing the relationship of the requested area to the distressed area.

Section 3: Select the appropriate box, indicating the percentage of workforce preference you are requesting. To request workforce preference, the bidder must first identify an eligible worksite.

Section 4: The Bidder must complete and sign the Certification.

This request form should be completed by bidders wishing to apply for LAMBRA preferences for this solicitation.

SECTION 2: REQUEST FOR 5% WORKSITE PREFERENCE *List the bidding firm and all suppliers and subcontractors who will work with the bidder to fulfill the terms of the contract. Indicate those firms for which the Bidder is requesting worksite preference eligibility by providing the requested information. Attach additional pages if needed.*

[illegible]

☐ I request a 1% preference for hiring eligible persons to perform 5 - 9.99% of the total contract labor hours

☐ I request a 2% preference for hiring eligible persons to perform 10 - 14.99% of the total contract labor hours

☐ I request a 3% preference for hiring eligible persons to perform 15 - 19.99% of the total contract labor hours

☐ I request a 4% preference for hiring eligible persons to perform 20% or more of the total contract labor hours

I hereby certify under penalty of perjury, that (1) the bidder is a California based company as defined in the LAMBRA regulations, (2) at least 50% of the labor hours required to perform a contract for goods, or 100% of the labor hours required to perform a contract for services shall be performed at the designated Local Agency Military Base Recovery Area(s) claimed in Section 2, (3) if applying for workforce preference, the bidder shall hire persons living within a Local Agency Military Base Recovery Area to perform the specified percent of total contract labor hours as requested in Section 3, and (4) all information provided in this request is true, correct, and complete. Any person falsely certifying, willfully providing false information, omitting information, or failing to comply with the EZA statute is subject to penalties, fines and possible loss of State contracting eligibility.

BIDDER'S SIGNATURE		PRINTED OR TYPED NAME	
TITLE	AREA CODE & PHONE NUMBER		DATE EXECUTED

Program Description	Other Bidding Preference Programs	Instructions for completing "LAMBRA" Preference Request on Reverse
<p>The intent of the Local Agency Military Base Recovery Area (LAMBRA) Act is to promote economic development and employment opportunities in designated LAMBRAS by offering bidding preferences on qualified solicitations.</p> <p>The LAMBRA Act provides for two preferences: Worksite and Workforce.</p> <p><i>Worksite Preference:</i> Bidders may be eligible for a 5% bid preference on state goods and services valued at more than \$100,000 if the worksite is located in a LAMBRA as designated by the State Trade and Commerce Agency.</p> <p>LAMBRA allows state contracting officials to award the bid worksite preference when 50% of the labor hours required to perform a contract for goods, or 100% of the labor hours required to perform a contract for services is performed at the approved worksites.</p> <p><i>Workforce Preference:</i> Companies qualifying for the 5% worksite preference may request an additional 1% - 4% workforce preference by certifying to hire a specified percent of their contract workforce employees from those designated as LAMBRA qualified individuals. (See Assembly Bill 3: Chapter 1012, 9/30/98).</p> <p>To request workforce preference, the bidder must first identify an eligible worksite.</p> <p>LAMBRA bid preferences do not apply to contracts in which the worksite is fixed.</p> <p>For more detail, see California Government Code, Section 7118 et seq., and California Code of Regulations, Title 2, Section 1896.100. et seq.</p>	<p>In addition to the LAMBRA Act, the State has other bidding preference programs for which you might qualify:</p> <p>TACPA - Target Area Contract Preference Act (up to a 9% bidding preference)</p> <p>EZA -Enterprise Zone Act (up to 9% bidding preference)</p> <p>Small Business - Certified small businesses in California can receive a 5% bidding preference.</p> <p>A non-certified small business that claims any combination of EZA, TACPA or LAMBRA preferences cannot use these preferences to displace a certified small business.</p> <p>How the Bidding Preference Works</p> <p>The LAMBRA bidding preference that you qualify for is used only for bid solicitation purposes, to a maximum of \$50,000. The preference does not alter the amount of the resulting contract.</p> <p>If you qualify for more than one bidding preference (EZA, TACPA, LAMBRA, Small Business) the maximum preference allowed by law is 15% or \$100,000.</p> <p>Reporting Requirements</p> <p>Firms receiving LAMBRA preferences must report their labor hours. Reference the state contract on which you are bidding for specific reporting requirements.</p> <p>How to Identify LAMBRA Locations</p> <p>Contact the State Trade and Commerce Agency at (916) 324-8211.</p>	<p>Section 1: Enter the solicitation number and the name of the state department or agency offering the solicitation.</p> <p>Section 2: Enter the requested information for 1) the bidding firm, and 2) all firms with whom the bidder will be subcontracting to perform the work required to complete this bid. You must list all firms, including the manufacturer, if applicable, not just those requesting worksite preference.</p> <p><i>Firm's role in this bid:</i> Enter the appropriate description indicating what job the listed firm will perform.</p> <p><i>Military Base Recovery Area Name:</i> See instructions above on "How to Identify LAMBRA Locations."</p> <p><i>Labor Hours Estimated:</i> For each firm listed, estimate the total labor hours to be performed. Total the estimated hours for each firm and enter them into the box labeled "Total Labor Hours Estimated."</p> <p><i>Criteria:</i></p> <p>A: The firm is located in a California designated LAMBRA.</p> <p>B: The firm will establish a worksite in a California designated LAMBRA.</p> <p>C: GOODS ONLY. The firm will purchase the contract goods from the manufacturer(s) located in a LAMBRA.</p> <p>Section 3: Select the appropriate box, indicating the percentage of workforce preference you are requesting. To request workforce preference, the bidder must first identify an eligible worksite.</p> <p>Section 4: The Bidder must complete and sign the Certification.</p>

This request form should be completed by bidders wishing to apply for EZA preferences for this solicitation.

*See reverse for program
description and
instructions for completing
this form.*

SECTION 2: REQUEST FOR 5% WORKSITE PREFERENCE

SECTION 2: REQUEST FOR 5% WORKSITE PREFERENCE *List the bidding firm and all suppliers and subcontractors who will work with the bidder to fulfil the terms of the contract. Indicate those firms for which the bidder is requesting worksite preference eligibility by providing the requested information. Attach additional pages if needed.*

[illegible]

SECTION 3: REQUEST FOR 1% - 4% WORKFORCE PREFERENCE

- ☐ I request a 1% preference for hiring eligible persons to perform 5 - 9.99% of the total contract labor hours
- ☐ I request a 2% preference for hiring eligible persons to perform 10 - 14.99% of the total contract labor hours
- ☐ I request a 3% preference for hiring eligible persons to perform 15 - 19.99% of the total contract labor hours
- ☐ I request a 4% preference for hiring eligible persons to perform 20% or more of the total contract labor hours

SECTION 4: CERTIFICATION

I hereby certify under penalty of perjury, that (1) the bidder is a California based company as defined in the EZA regulations, (2) at least 50% of the labor hours required to manufacture the goods and to perform a contract for goods, or 90% of the labor hours required to perform a contract for services shall be performed at the designated enterprise zone worksite(s) claimed in Section 2, (3) if applying for workforce preference, the bidder shall hire persons living in a targeted employment area or who are enterprise zone eligible employees to perform the specified percent of total contract labor hours as requested in Section 3, and (4) all information provided in this request is true, correct, and complete. Any person falsely certifying, willfully providing false information, omitting information, or failing to comply with the EZA statute is subject to penalties, fines and possible loss of State contracting eligibility.

BIDDER'S SIGNATURE		PRINTED OR TYPED NAME	
TITLE	AREA CODE & PHONE NUMBER		DATE EXECUTED

Program Description

The intent of the Enterprise Zone Act (EZA) is to promote economic development and employment opportunities in designated enterprise zones by offering bidding preferences on qualified solicitations.

EZA provides for two preferences: Worksite and Workforce.

Worksite Preference: Bidders may be eligible for a 5% bid preference on state goods and services contracts valued at more than \$100,000 if the worksite is located in an enterprise zone as designated by the State Trade and Commerce Agency.

EZA allows state contracting officials to award the bid worksite preference when 50% of the labor hours required to manufacture the goods and to perform a contract for goods, or 90% of the labor hours required to perform a contract for services is performed at the approved worksites.

Workforce Preference: Companies qualifying for the 5% worksite preference may request an additional 1% - 4% workforce preference by certifying to hire a specified percent of their contract workforce employees from a targeted employment area, or from enterprise zone eligible employees.

To request workforce preference, the bidder must first identify an eligible worksite.

EZA bid preferences do not apply to contracts in which the worksite is fixed.

For more detail, see California Government Code, Title 1, Division 5, Chapter 12.8, Section 707 et seq. and California Code of Regulations, Title 2, Section 1896.100.

Other Bidding Preference Programs

In addition to EZA, the State has other bidding preference programs for which you might qualify:

TACPA - Target Area Contract Preference Act (up to a 9% bidding preference)
LAMBRA - Local Agency Military Base Recovery Area Act (up to a 9% bidding preference)
Small Business - Certified small businesses in California can receive a 5% bidding preference.

A non-certified small business that claims any combination of EZA, TACPA or LAMBRA preferences cannot use these preferences to displace a certified small business.

How the Bidding Preference Works

The EZA bidding preference that you qualify for is used only for bid solicitation purposes, to a maximum of \$50,000. The preference does not alter the amount of the resulting contract.

If you qualify for more than one bidding preference (EZA, TACPA, LAMBRA, Small Business) the maximum preference allowed by law is 15% or \$100,000.

Reporting Requirements

Firms receiving EZA preferences must report their labor hours. Reference the state contract on which you are bidding for specific reporting requirements.

How to Identify Enterprise Zone Locations

Contact the city or county economic development office or the State Trade and Commerce Agency at (916) 324-8211.

Instructions for completing "Enterprise Zone Act Preference Request" on Reverse

Section 1: Enter the solicitation number and the name of the state department or agency offering the solicitation.

Section 2: Enter the requested information for 1) the bidding firm, and 2) all firms with whom the bidder will be subcontracting to perform the work required to complete this bid. You must list all firms, including the manufacturer, if applicable, not just those requesting worksite preference.

Firm's role in this bid: Enter the appropriate description indicating what job the listed firm will perform.

Enterprise Zone Name: See instructions above on “How to Identify Enterprise Zone Locations.”

Labor Hours Estimated: For each firm listed, estimate the total labor hours to be performed. Total the estimated hours for each firm and enter them into the box labeled “Total Labor Hours Estimated.”

Criteria:

A: The firm is located in a California designated enterprise zone

B: The firm will establish a worksite in a California designated enterprise zone.

C: GOODS ONLY. The firm will purchase the contract goods from the manufacturer(s) located in a California designated enterprise zone.

Section 3: Select the appropriate box, indicating the percentage of workforce preference you are requesting. To request workforce preference, the bidder must first identify an eligible worksite.

Section 4: The Bidder must complete and sign the Certification.

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- 2.4 Disabled Veteran Business Enterprise Good Faith Effort
- 3 Contractor Certification Clauses
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- 5.A Standard Agreement (Std. 213) with General Terms and Conditions
- 5.B Standard Agreement with Federal Funding Language and General Terms and Conditions
- 5.C Standard Agreement with State and Consumer Services Agency Required Terms and Conditions

NOTE: The above Standard Agreements, 5A, 5B, and 5C, all include the following:

- 1. Scope of Work
 - 2. Budget
 - 3. Department of General Services General Terms and Conditions
 - 4. Special Terms and Conditions
 - 5. Additional Provisions
 - 6. Agreement Representatives
- 6 Target Area Contract Preference Act (TACPA) Request
- 7 Local Agency Military Base Recovery Area (LAMBRA) Preference Request
- 8 Enterprise Zone Act (EZA) Preference Request

EVALUATION CRITERIA

How Will My Statement of Qualifications Be Scored?

The Evaluation Committee will award points for the technical criteria based on the following considerations.

Point Scale

Fail	0-1 Points	<ul style="list-style-type: none">✓ The response is not in substantial accord with the RFQ requirements.✓ Has a potential significant effect on the amount paid or net cost to the State or the quality or quantity of the product and/or service.✓ Provides an advantage to one competitor over the other competitors. For example, not paying minimum wages.
Minimally Acceptable	2-4 Points	<ul style="list-style-type: none">✓ The proposal states a requirement, but offers no explanation of how or what will be accomplished.✓ Proposal does not completely respond to the criteria. Information presented does not provide a good understanding of Bidder's intent, does not give detailed information requested by the RFQ, or does not adequately support the proposal.✓ The response contains a technical deficiency which is an inaccurate statement or reference concerning the how, what, where, or when, which is part of an overall statement or description.
Meets Minimum Requirements	5-6 Points	<ul style="list-style-type: none">✓ Satisfies the minimum requirements and describes generally how and/or what will be accomplished.✓ Provides an average understanding of the Bidder's response to the RFQ.
Exceeds Minimum Requirements	7-8 Points	<ul style="list-style-type: none">✓ Response satisfies the minimum requirements and specifically describes how and/or what will be accomplished in an exemplary manner, using sample products and illustrative materials (i.e. diagrams, charts, graphs, etc.).✓ A response which gives a clear and detailed understanding of the Bidder's intent. Response presents a persuasive argument supporting the proposal.
Exceptional	9-10 Points	<ul style="list-style-type: none">✓ Exceeds the minimum requirements and specifically describes how and/or what will be accomplished in a superior manner, both quantitatively and qualitatively, using sample products and illustrative materials (i.e., diagrams, charts, graphs, etc.).✓ Outstanding response with clear, detailed and relevant information exceeding the information requested. Response presents a compelling argument supporting the proposal.

Exhibit A – Evaluation Criteria

How Will the SOQs Be Ranked?

After each SOQ is scored, it will be placed on a list, in rank order, with the highest scoring SOQ placed first and the remainder in descending order based on score.

What Are The Negotiation Rules?

The Commission will initiate cost negotiations with the first ranked Bidder(s) as determined above. If negotiations fail with a Bidder and the Commission needs to initiate negotiations with a subsequent Bidder, the following rules will be applied to select the subsequent Bidder(s):

The Bidder's name that failed in negotiations will be taken off the respective ranking list.

The Commission will then initiate negotiations with the next highest Bidder.

Evaluation of Written Proposal – Criteria

1. Approach to Tasks in Scope of Work <i>(Maximum points 210)</i>			
(a). General Approach	Weight	Max. Points	Point Total
1. Response to Scope of Work: <ul style="list-style-type: none">✓ Completeness and thoroughness of the Work Plan (addresses all of the tasks defined).✓ Demonstrated understanding of Scope of Work tasks.✓ Clarity, succinctness and organization of SOQ.	2	10	20
2. Demonstrated experience with similar tasks. Use of appropriate classification of staff for Scope of Work tasks.	2	10	20
Innovative approaches to work tasks	1	10	10
(b). Task 1 – Evaluate Energy Efficiency Opportunities in Existing Buildings	Weight	Max. Points	Point Total
Relevance and quality of examples demonstrating knowledge and understanding of: <ul style="list-style-type: none">✓ Cost-effective energy efficient technologies✓ Codes and regulations for retrofits✓ Experience in preparing performance specifications for energy efficiency projects✓ Experience in preparing high quality, technically sound and well documented technical reports.✓ Funding and regulatory review process for school and other public facilities✓ Implementation experience on recommended projects	4	10	40
(c). Task 2 – Provide support for New Construction projects	Weight	Max. Points	Point Total
1. Relevance and quality of examples demonstrating knowledge and understanding of:	4	10	40

Exhibit A – Evaluation Criteria

<ul style="list-style-type: none"> ✓ New construction design review ✓ Building simulation models ✓ Cost estimating ✓ Sustainable building design concepts ✓ Life cycle cost analysis of resource efficient building materials ✓ Codes and regulations ✓ Performance specifications ✓ Knowledge of technically and economically feasible energy ✓ High performance school design strategies efficiency 			
(d). Task 3. – Evaluate Opportunities for Cogeneration, Distributive Generation, Renewable Energy Systems, and Thermal Energy Storage	Weight	Max. Points	Point Total
<p>Relevance and quality of examples demonstrating knowledge and understanding of:</p> <ul style="list-style-type: none"> ✓ Cogeneration ✓ Distributive Generation ✓ Renewable Energy Systems ✓ Thermal Energy Storage ✓ Project feasibility and cost ✓ Regulation Issues ✓ Project experience beyond feasibility study 	2	10	20
(e). Task 4. – Evaluate Energy Efficiency Opportunities in Water and Wastewater Treatment Facilities	Weight	Max. Points	Point Total
<p>Relevance and quality of examples demonstrating:</p> <ul style="list-style-type: none"> ✓ Evaluation of energy efficiency opportunities in water and wastewater treatment facilities. ✓ Electrical load management systems and strategies ✓ Motor and pump analysis, including variable speed drives ✓ Fuel cell analysis ✓ Actual project experience beyond feasibility study 	2	10	20
(f). Task 5. – Provide Engineering Support	Weight	Max. Points	Point Total
<p>Relevance and quality of examples demonstrating:</p> <ul style="list-style-type: none"> ✓ Experience in providing independent and critical review of investment grade audits and studies ✓ Experience in independently reviewing third party-prepared commissioning plans, test results and reports ✓ Experience in providing critical reviews of the energy elements in a performance contract ✓ Experience in evaluating project life cycle costs ✓ Experience in reviewing and conducting measurement and verification plans ✓ Knowledge of utility incentive programs ✓ Experience providing utility rate analysis ✓ Knowledge of the building and equipment commissioning process 	3	10	30
(g). Task 6. – Program and Energy Efficiency	Weight	Max. Points	Point Total

Exhibit A – Evaluation Criteria

Marketing			
Relevance and quality of examples demonstrating: <ul style="list-style-type: none"> ✓ Marketing materials such as brochures and applications ✓ Energy efficiency case studies that showcase successful program projects. 	1	10	10
PRIME CONTRACTOR'S QUALIFICATIONS (Maximum points 30)	Weight	Max. Points	Point Total
a) Ability to provide: <ul style="list-style-type: none"> ✓ Effective contract management ✓ Appropriate contract management team ✓ Timely and expeditious approval of work authorizations and other contract services ✓ Subcontractors with prompt payment ✓ Cost effectiveness and efficient contract management and administration methods. ✓ Analytical Tools 	3	10	30
PROJECT TEAM RELEVANT EXPERIENCE AND QUALIFICATIONS (Maximum points 30)	Weight	Max. Points	Point Total
a) Ability to provide quality services for all task areas using multiple subcontractors b) The experience and qualifications of the Bidder's project manager.	1	10	10
c) The experience and qualifications of the team members working in their technical area(s). <ul style="list-style-type: none"> ✓ Qualifications of assigned personnel ✓ Experience of assigned personnel ✓ Availability of assigned personnel ✓ Education of assigned personnel ✓ Demonstrated accomplishments of assigned personnel on Scope of Work task areas 	2	10	20
REFERENCES (maximum points 40)	Weight	Max. Points	Point Total
<ul style="list-style-type: none"> ✓ Relevance of references to this RFQ and the Scope of Work tasks ✓ Validation of experience and performance as reflected in client reference questions 	4	10	40
5. EXAMPLES OF PRIOR WORK (maximum points 40)	Weight	Max. Points	Point Total
<ul style="list-style-type: none"> ✓ Depth, quality, and relevance of work examples 	4	10	40

Exhibit A – Evaluation Criteria

6. RESPONSE TO QUESTIONS IN HYPOTHETICAL ILLUSTRATIONS <i>(maximum points 80)</i>	Weight	Max. Points	Point Total
<ul style="list-style-type: none"> ✓ Accuracy of response in each question ✓ Clarity and succinctness of response ✓ Demonstrated knowledge of the issues raised in each question ✓ Breadth and depth of response 	8	10	80
Evaluation of Written Proposal <i>(Maximum Points)</i>			430
Evaluators Subtotal			
Evaluation of Oral Interview <i>(Maximum Points)</i> <i>(Interview evaluation for three top ranked Bidders only)</i>			70
OVERALL TOTAL SCORE			500

Exhibit A – Evaluation Criteria

EVALUATION OF ORAL INTERVIEW

Criteria

1. Representation of Team (maximum points 10)	Weight	Max. Points	Point Total
a) Presentation included the Project Manager and significant members of the team, including representatives from subcontractors.	.5	10	5
b) Extent to which the team was represented and demonstrated appropriate knowledge, expertise and ability to complete their project responsibilities.	.5	10	5
2. Interview Questions (maximum points 50)	Weight	Max. Points	Point Total
a) Bidder Team's ability to respond to Evaluation Committee questions. Clarity and succinctness of responses.	5	10	50
3. Quality of Presentation (maximum points 10)	Weight	Max. Points	Point Total
a) Bidder's overall preparedness for the interview. Clarity and succinctness of presentation.	1	10	10
Maximum Points			70
Evaluator's Total Points			

Exhibit B - Work Authorization Sample

TECHNICAL ASSISTANCE PROGRAM

Work Authorization No.:	1
Project Title:	ABC Union High School District
Program Area:	Task 1: Evaluate Energy Efficiency Opportunities in Existing Buildings
Contractor:	XXXXXXXXXXXXXXXXXXXX
Subcontractor:	XXXXXXXXXXXXXXXXXXXX
Contract Agreement No.:	XXXXXXXXXXXXXXXXXXXX
Commission Contract Manager:	XXXXXXXXXXXXXXXXXXXX
Commission Project Manager:	XXXXXXXXXXXXXXXXXXXX
Effective Date:	XXXXXXXXXXXXXXXXXXXX
Amount Not to Exceed:	XXXXXXXXXXXXXXXXXXXX

Exhibit B - Work Authorization Sample

WORK AUTHORIZATION NO. 1

Under the provisions of the contract agreement indicated above, XXXXXXXXXX., hereinafter called Contractor, and XXXXXXXXXX., hereafter called subcontractor, are authorized to proceed with work outlined below.

A. BACKGROUND

ABC Union High School District requested an energy audit for ACB and DEG High Schools. It is the intent of this work authorization that the contractor will provide the assistance in developing a preliminary energy audit for the school buildings. The total conditioned square footage is approximately 281,654. Once cost-effective projects are identified, the school district would like to use the study to implement the most cost-effective projects. If the school district requests further assistance for project implementation, it is anticipated that the performance specifications for these projects will be prepared.

B. SCOPE OF WORK

Task 1: Site Visit/Initial Meeting and Energy Audit

The contractor will conduct a site visit for the purpose of completing a preliminary energy audit for the following high schools: ACB High School (153,062 s.f.) and EFG High School (128,592) for a total of approximately 281,654 square feet. The site visit will include: gathering historical data of the existing energy use, meeting with the facility's staff, touring the facility, identification of major equipment and systems, determining occupancy schedules and energy use patterns, and identification of any facility and/or occupancy changes that could affect energy use.

At the site visit, the contractor is expected to gain a thorough understanding of how the District intends to implement the energy projects and to assess the best form to present the information to meet the District's implementation needs.

Task 2: Perform Energy Efficiency Improvement Analyses

The contractor will perform energy efficiency improvement analyses of the lighting, HVAC equipment and swimming pools. Energy savings analyses will be performed to determine which, if any, energy options are cost effective. Special analyses will be made to answer specific questions asked by the school district staff. At a minimum, the analysis will address the following:

- Recommend ways to improve the lighting systems for the school buildings.
- Recommend energy efficient HVAC improvement and control projects.
- Recommend occupancy sensor locations and type.
- Identify additional equipment control options.
- Recommend interior and exterior lighting retrofits.
- Recommend task and any incandescent lighting improvements.
- Recommend on-site generation if feasible.

Task 3: Report Preparation

The contractor will prepare an energy efficiency report for the two high schools that describes the school buildings and their energy use, identifies all cost effective energy options by building, presents recommendations regarding all options analyzed, and includes all calculations conducted in support of

Exhibit B - Work Authorization Sample

the analyses. In the report, the contractor will provide guidance to the school district on a schedule and approach to implementing the recommended energy efficiency projects.

Task 4: Draft Report/Incorporate Comments/Final Report

The contractor will provide one draft copy of the report to the Commission Project Manager and the school district staff. The contractor will incorporate appropriate changes and recommendations from the Commission Project Manager and the school district staff and finalize the report, delivering one unbound copy of the report to the District and to the Commission Project Manager.

Task 5: Monthly Status Report

The contractor shall prepare a monthly status report that summarizes all activities conducted by the contractor in regard to this project. The report shall be submitted on or by the fifteenth of each month to the Commission Project Manager until completion of this project.

Task 6: Contingent Work

When directed by the Commission's Project manager, the subcontractor will work on task(s) not specified in this work authorization. The contractor will not commence work unless directed to do so by the Commission's Project Manager.

C. SCHEDULE OF DELIVERABLES

Site visit	October 2001
Draft Report	four weeks after site visit
Final Report	1 week after comment received on draft report

D. COMPENSATION SCHEDULE

Payment will be made upon receipt of a product deliverable submitted to and approved by the Commission Contract Manager and Commission Project Manager. A request for payment must include an itemized invoice with cost backup and travel receipts attached. Ten percent of the amount invoiced will be withheld until the end of the subcontract term. Subcontractor retention may be released as often as twice each year for satisfactorily completed work authorizations.

Exhibit B - Work Authorization Sample

E. BUDGET WORK HOURS BY TASK AND STAFF

See attached budget estimate for identification of services (hours by task and rate class) including direct expenses.

Approval:

XXXXXXXXXX, Contract Manager
California Energy Commission

Date

XXXXXXXXXXXX, Project Manager
California Energy Commission

Date

XXXXXXXXXX, Contract Manager
Company XYZ

Date